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CONTENTS

NUMBER 1—FEBRUARY, 1929

Perspectives in Political Science, 1903-1928, <i>Jesse S. Reeves</i>	1
America's Rôle in the League of Nations, <i>Manley O. Hudson</i>	17
Administrative Law and the Constitution, <i>Marvin B. Rosenberry</i>	33
Campaign Expenditures, <i>Edward M. Sait</i>	48
American Government and Politics	
Campaign Funds in 1928, <i>James K. Pollock, Jr.</i>	59
Expansion of the Publications of the Department of State, <i>Kenneth Colegrove</i>	69
Constitutional Law in 1927-28, <i>Robert E. Cushman</i>	78
Legislative Notes and Reviews, <i>Clyde L. King</i> (ed.)	
State Constitutional Development Through Amendment in 1927, <i>W. Leon Godshall</i>	102
State Public Utilities Legislation, 1927, <i>Orren C. Hormell</i>	106
Recent Personnel Legislation, <i>Fred Telford</i>	112
State Forestry Legislation, 1927-28, <i>Jeannie S. Peyton</i>	116
Notes on Rural Local Government, <i>Thomas H. Reed</i> (ed.)	
City-County Consolidation in Allegheny County, Pennsylvania, <i>Rowland A. Egger</i>	121
The New Charter of Alameda County, California, <i>Paul M. Cuncannon</i>	124
Recent Proposals for Reorganizing County Government in Virginia, <i>James E. Pate</i>	131
Foreign Governments and Politics, <i>Walter J. Shepard</i> (ed.)	
Political Developments in Italy, <i>Henry R. Spencer</i>	139
The Spanish Directory and the Constitution, <i>Malbone W. Graham, Jr.</i>	150
The Soviet System of Federalism, <i>Paul P. Gronska</i>	159
News and Notes, Personal and Miscellaneous, <i>Managing Editor</i>	168
Annual Meeting of the American Political Science Association, <i>J. R. Hayden</i>	178
Book Reviews and Notices, <i>A. C. Hanford</i> (ed.).....	188
Recent Publications of Political Interest	
Books and Periodicals, <i>Clarence A. Berdahl</i>	242
Government Publications, <i>Miles O. Price</i>	278

NUMBER 2—MAY, 1929

Social Order and Political Authority, I, <i>John Dickinson</i>	293
Labor Parties in Japan, <i>Kenneth Colegrove</i>	329
American Government and Politics	
Second Session of the Seventieth Congress, <i>Arthur W. Macmahon</i>	364
Changes of Bureau Chiefs in the National Administration of the United States, 1926-29, <i>Arthur W. Macmahon</i>	383
Legislative Notes and Reviews, <i>Clyde L. King</i> (ed.)	
State Constitutional Development Through Amendment in 1928, <i>W. Leon Godshall</i>	404
Governors' Messages, 1929, <i>Ralph S. Boots</i>	410
Labor Legislation in 1928, <i>John B. Andrews</i>	417
Recent Radio Legislation, <i>Irwin Stewart</i>	421

Public Administration, 1928, <i>Leonard D. White</i>	427
Foreign Governments and Politics, <i>Walter J. Shepard</i> (ed.)	
The National Government of China, <i>Harold S. Quigley</i>	441
The "Dictatorship" in Yugoslavia, <i>Malbone W. Graham, Jr.</i>	449
Greece Abandons Proportional Representation, <i>A. T. Polyzoides</i>	459
News and Notes, Personal and Miscellaneous, <i>Managing Editor</i>	462
Book Reviews and Notices, <i>A. C. Hanford</i> (ed.)	469
Recent Publications of Political Interest	
Books and Periodicals, <i>Clarence A. Berdahl</i>	522
Government Publications, <i>Miles O. Price</i>	558

NUMBER 3—AUGUST, 1929

The Democratic Dogma and the Future of Political Science, <i>Edward S. Corwin</i>	569
Social Order and Political Authority, II, <i>John Dickinson</i>	593
Recent Changes in the Local Government of England and Wales, <i>I. G. Gibbon</i>	633
American Government and Politics	
The Bearing of <i>Myers v. United States</i> upon the Independence of Federal Administrative Tribunals, <i>James Hart</i>	657
<i>Marbury v. Madison</i> Today, <i>J. A. C. Grant</i>	673
The Report of the Steiwer Committee, <i>James K. Pollock, Jr.</i>	681
Administrative Reorganization and the University of Minnesota, <i>Harvey Walker</i>	685
State Constitutional Law in 1928-29, <i>Oliver P. Field</i>	688
Notes on Municipal Affairs, <i>Thomas H. Reed</i> (ed.)	
The Proposed Charter of the Federated "City of Pittsburgh," <i>Rowland A. Egger</i>	718
A "P. R."-City Manager Charter for Philadelphia?, <i>George H. Hallett, Jr.</i>	726
The Cleveland Charter Threatened Again, <i>Doris Darmstadter</i>	732
The City Manager Campaign in Toledo, <i>H. T. Shenefield</i>	735
News and Notes, Personal and Miscellaneous, <i>Managing Editor</i>	738
Book Reviews and Notices, <i>A. C. Hanford</i> (ed.).....	747
Doctoral Dissertations in Political Science, <i>Pitman B. Potter</i>	795
Recent Publications of Political Interest	
Books and Periodicals, <i>Clarence A. Berdahl</i>	805
Government Publications, <i>Miles O. Price</i>	848

NUMBER 4—NOVEMBER, 1929

The German Party System, <i>James K. Pollock, Jr.</i>	853
The British Political Scene Since the General Election, <i>Roger H. Soltan</i>	892
Legislative Notes and Reviews, <i>Clyde L. King</i> (ed.)	
The Progress of Permanent Registration of Voters, <i>Joseph P. Harris</i>	908
The 1929 Legislative Session in New York, <i>Finla G. Crawford</i>	914
Amending a State Constitution by Custom, <i>David Y. Thomas</i>	920
Notes on Administration, <i>Leonard D. White</i> (ed.)	
The British Civil Service and the Trade Union Act of 1927, <i>J. H. Macrae-Gibson</i>	922

Notes on Judicial Organization and Procedure, <i>Walter F. Dodd</i> (ed.)	
The Activities and Results of Crime Surveys, <i>John M. Pfiffner</i>	930
Foreign Governments and Politics, <i>Walter J. Shepard</i> (ed.)	
The Russian Communist Party, <i>Samuel N. Harper</i>	956
Notes on International Affairs	
The Personnel of International Administration, <i>Norman L. Hill</i>	972
News and Notes, Personal and Miscellaneous, <i>Managing Editor</i>	989
The Study of the Ill as a Method of Research into Political Personal- ities, <i>Harold D. Lasswell</i>	996
An Experiment in By-Product Teaching, <i>James T. Young</i>	1002
Book Reviews and Notices, <i>A. C. Hanford</i> (ed.)	
Recent Publications of Political Interest	
Books and Periodicals, <i>Clarence A. Berdahl</i>	1066
Government Publications, <i>Miles O. Price</i>	1099
Index to Volume XXIII, <i>Jessie P. Boswell</i>	1105

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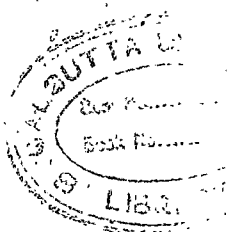
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No. 1

PERSPECTIVES IN POLITICAL SCIENCE, 1903-1928¹

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University of Michigan

The American Political Science Association was founded December 30, 1903, at New Orleans. Its organization was the outgrowth of a movement looking toward a national conference on comparative legislation. A group having the matter in charge held a meeting in December, 1902, at Washington, the call for which stated that the formation of an American Society of Comparative Legislation had been suggested as "particularly desirable because of the complexity of our system of federal government." Interest in legislation in general and in the problems presented by the law-making activities of the federal and state agencies in particular was, therefore, the starting point from which proceeded the wider range of interests which gave rise to this Association. The preliminary meeting in Washington indicated that if a new national society were to be formed it might be well to enlarge its scope so as to embrace the whole of political science, of which comparative legislation is an important part. A year later, thanks to the coöperation of the American Historical Association and of the American Economic Association, which were having joint meetings in New Orleans, opportunity was given to the group to form an organization, the members of which were in large part members of one or both of the older Associations. The adoption of the constitution

¹ Presidential address delivered before the American Political Science Association at Chicago, Ill., December 27, 1928.

of this Association was the result. In a way, therefore, the American Political Science Association is the god-child of the American Historical and the American Economic Associations. All but two annual meetings have been held jointly with one or both of the older bodies, indicating not only a factor of common membership but also a large measure of common interests and kindred endeavors.

In the first presidential address, Professor Goodnow admirably set forth the aim of the Association: "to assemble upon common ground those persons whose main interests are connected with the scientific study of the organization and functions of the state."

I

The current of the past quarter-century has shown in greater and greater degree the interdependence of the social sciences, as well as new dependence upon the results gained in other fields of learning. All of the social sciences, save history, if history be one of them, labor under the common difficulty of having a terminology derived largely from popular usage, so that much of the discipline of each has consisted in the endeavor to impart to words and phrases of popular speech an exact, consistent, and logical content and implication. From this distance in time, to one who admittedly has not kept pace with the development of economic thought, the economics of the earlier period remains in the memory as a more or less confused logomachy of a long series: wealth, capital, rent, and value. In political science there has been a similar one: the state, nation, government, administration, and, above all, sovereignty. Not being an economist, I assume that by this time these fundamental ideas have reached a fairly determined stage of exactitude and general agreement, although now and then one may seem to hear reverberations and echoes of the earlier disputations. If one were impatient with the iron law of wages, he found little solace in the Austinian theory of sovereignty. If he has been wearied by an Austrian theory of value, he may now seek refreshment in an Austrian theory of sovereignty.

History, however, has had none of these hurdles of terminology to overcome. Twenty-five years ago the controversy was still on as to whether or not history was indeed a science. How, if at all, this dispute was settled is not clear. During the decade now derisively called the "Gay Nineties," but which called itself *fin de siècle*, Clio was forsaken and even relegated to the lumber-room. She has now been restored and not infrequently decorated in colors, which, if not in the Greek manner, are at least challenging to the eye and stimulating to the imagination. If not always upon a pedestal, as of yore, it may be because of her movement in a syncopated rhythm, the name and nature of which were unknown to her sister muse.

Every generation undertakes to write history in its own image, but the present economic interpretation of history is not original with this acquisitive generation, nor with Karl Marx, but it may be ascribed to that more understandable, because more human, philosopher, Sancho Panza, who perceived an everlasting dichotomy of mankind among those who have and those who have not. Following a pragmatic lead, Panza ranged himself upon the side of those who have. We moderns, in this respect seeking justice rather than advantage, rather more generally incline to the other side; yet some are like Simeon Stylites, who, according to the Pilgrim's Scrip, "saw the hog in human nature and straightway took human nature for a hog."

The economic motive has assuredly made its impress upon all of those subjects which are grouped as political science, but our twenty-five years have witnessed a succession of other influences upon them, affecting partly their conduct, partly their methods, and partly their theory. If we regard political science as that body, or rather mass, of specific descriptions of those phenomena of human relationships called political (not even yet very accurately defined or determined) plus the generalizations sought to be drawn from these descriptions, we are admittedly in a field of very ancient origin. Political self-consciousness began with the Greeks, and probably little of its expression has been lost. Yet, beginning with Aristotle, one seeks vainly for any generalization to be drawn from the great range of these

phenomena which at all approximates the universality of a natural law in the physical world. The state which we know is not of ancient but, considering the age of mankind, of recent appearance, not more than four centuries ago. The whole edifice of political theory is modern because of the new institution. Those processes and conclusions of thinkers which have gone to make up political theory have ranged about momentous changes, desired or accomplished, which have demanded justification or invited attack. Aristotle's generalizations were from the whole of the political world, it is true; but that world was Greece. Bodin's theory of sovereignty was a juristic rather than a political apologue for the new territorial and national state. The state of nature, basis of a restated law of nature and of natural rights, was variously described, depending upon successive relations, fanciful or real, of contemporary travellers in the New World. The social compact doctrine, corollary of the state of nature, was a justification of revolution, either after the fact, as with Locke, or before it, as with Rousseau.

Even those two so-called American inventions in political theory were set forth in order to solve a specific problem, that of a divided sovereignty, to support the institution of a national state of a new kind, and that, ascribed to Calhoun, of concurrent pluralities, for the more effectual protection of minorities in such a state. The tripartite division of governmental functions, which has had such far-reaching effects that it has produced a distinct system of government, afforded a practical method of adjusting and compromising divergent plans in the federal constitutional convention. It was justified, it is true, by appeals to Montesquieu's famous passage, but, as is well known, the exposition of the French jurist and historian had a definite purpose and was based upon a misapprehension, or misstatement, of English conditions, then undergoing fundamental changes. This doctrine of Montesquieu, once a dogma of constitutional liberty, has come to be, in the minds of those who in these days look for administrative excellence, a serious impediment to governmental efficiency in the circumstances of democratic incompetence. The doctrine of natural rights,

first a program of radicalism and a valuable *modus vivendi* in a pioneer era and then imbedded in many state constitutions, has not infrequently appeared as the last refuge of privilege and reaction in a society of increasing social and industrial complexity. The absolutist theory of the state, which so dominated German thought throughout half a century, and the usually accepted academic doctrine as taught in the United States, was the expression of the hope and realization of a new German national unity, the clue to which had been given by German philosophers of an earlier time. The conceptions of democracy and of nationality have had no fixed content. Each has varied in time and in space as the innumerable factors have varied. Progress itself, tending to be viewed by each people in terms of its own desires and ambitions, has no fixity as a concept, and its recent historian seems to find in it little more than an optimistic synonym for change.

How remote seem the days when Freeman's dictum, "history is past politics and politics present history," was painted in letters large upon the walls of Adams's seminary-room at the Johns Hopkins University! The first part was long ago discarded by historians. History is as much more than the record of political happenings as it is the recounting of military campaigns or of dynastic arrangements. Economics and sociology, in so far as they attempt the understanding of the present, are as much of present history as is politics, unless, indeed, we give to politics the comprehensive meaning which Aristotle gave to it. What distinguishes history from the social sciences that deal with the present is that history deals with events which are fixed—with the past which is irrevocable. It is true that the record may never be complete; it is always subject to revision. The variation, however, is in the observer and interpreter of the record as well as in the record itself. The effect is that each generation rewrites history.

In the social sciences, movement and change take place while the observations are being taken, and while these phenomenal changes are occurring, the observer changes. He changes as to what he desires to see, and these desires have no

common denominator. It may be for the purpose of correcting error due to this shifting base that in political thinking there has for so long a time been an appeal to, or dependence upon, some body of thought outside that which we call political. These would tend to hold the observer fast. Or, to put it in another way, political science has never been a self-contained body of thought, but has sought outside itself its primary assumptions and major premises, from religion, ethics, philosophy, or from the current *clichés* of natural science. Such tendencies are of such long standing that we may almost call them traditional.

Jeremy Bentham, philanthropist in the literal meaning of that word, was one of the most successful reformers in history; for hardly a reform in Great Britain during more than a half-century but what can be traced to him and his influence. But he was in no sense "historically-minded." An accurate perspective is at once a requisite of historical-mindedness and of a sense of humor. Both of these may be handicaps to a reformer. They are sometimes paralyzing to the reforming effort. Bentham's success as a reformer may have been due in part to his freedom from these handicaps. He was wholly occupied with the shortcomings of his present, which were not to be justified merely because "they had come to be." In a generation still describing political phenomena in terms of Newtonian physics, it was he who directed attention to the dangers of reasoning from analogy in politics.

This way of thinking is as old as the art of government itself, for the very word *to govern* comes in by analogy from navigation. The body politic gave rise to all sorts of analogies to the human body which have been as assumptions changing, according to the accepted criteria of anatomy and physiology, from John of Salisbury to Herbert Spencer. We smile now at Bluntschli's insistence that the state is a man, the church female. Woodrow Wilson was fond of calling attention to the dependence of the framers of the Constitution upon the cosmic theories of their age. Newton is reflected in our federal Constitution, as he is in Addison's *Spacious Firmament on High*. The hard-headed

Bagehot of Lombard Street undertook the task of interpreting politics in terms of the new Darwinism. Political thinking, playing round the idea of progress, has for over half a century sought support in certain assumed principles of organic evolution. But while it was doing so the doctrines of evolution have been recast. "Struggle for existence" and "the survival of the fittest" are phrases which have furnished many an argument, imperialist as well as egoistic. Today, reasoning from fancied analogies to biological evolution is out of style. No one appears as yet to have applied to politics the mutation theory of De Vries.

In these days "everything is relative." I confess inability to assess the responsibility for this so readily accepted proposition to Einstein, for I do not know what the Einstein theory is, further than that it is said to disturb somewhat the Newtonian statement of gravitation: *de minimis curat lex naturae*. The writings of Haldane, however, indicate the implications outside the realm of physics which the philosophical statement of relativity has produced. A popular stereotype has not been long in making its appearance.

Political science always has its theory, and no doubt that theory usually seeks its metaphysic. Political theory is not identical with political philosophy, but has always to some extent rested upon it, just as jurisprudence rests upon legal philosophy and both political and legal philosophy spring from philosophy without an adjective. What is called pragmatism (lacking, we are told, a metaphysic) is with many an avenue of escape from metaphysical implications, if not from philosophical starting-points. The Great Cham himself might have been a philosopher, Boswell tells us, but for the fact that cheerfulness was always breaking through.

Sociology, endeavoring to find an orderly arrangement of all human activities, not only has effected an enormous influence upon our ways of viewing political phenomena, but it has helped to create a school of political science and a system of jurisprudence. Anthropology and folklore have undoubtedly thrown great light upon the origins of political association, as a result

of which certain political scientists have made generalizations dangerously broad as to the origin of the state.

More significant for the record of the past quarter-century is the influence of psychology upon ways of thinking in political science. To appraise this influence is not altogether easy. One is confronted at the outset with the divergences among the psychologists themselves, among the behaviorists (of whom there seem to be distinct varieties), the functionalists, and the *Gestalters*, so that it is well for the political scientist to be upon his guard. The solid substance of so-called "mass-psychology" can hardly as yet be called impressive and it is unsatisfactory to interpret political actions in terms of it. Many political scientists are inclined to think that the most effective political psychologist is a certain type of practical politician who has never heard of Wundt, or James, or Freud, or Watson.

The years since this Association was founded have seen a vast increase in the number, kinds, and complexities of the functions of the state and of government. During these years there has intervened an era which has disturbed the course of political ideas among professional and lay thinkers to an extent comparable only with those of the Reformation and the French Revolution. While the sphere of government was increasing throughout the world for more than a generation before the beginning of the Great War (a process reflected in the increasing bulk of the statute book on the one hand, and of the budget on the other), political theorizing was attacking the traditional formulas of sovereignty. Just before the World War broke out Ernest Barker wrote a brilliant essay called *The Discredited State*. His conclusion was that the "discredit" of the state was a sign that it had done its work well and was doing its work well. Duguit had indicated a substitute for sovereignty in the rendition by the state, through government, of general services. Syndicalists had affirmed a pluralistic state, or else had denied the reality of any. The law of nature had had a rebirth, which was itself, by implication if not by direct averment, a challenge to the absolute state. Just before the war one might have concluded from much of the literature of internationalism that the

claims of nationality were upon the wane, and that the Nineteenth Century was the century of the rise and fall of nationalism.

Barker's essay was printed in 1915, with a note not without historical value, re-reading it at this distance of time. "It is curious," he wrote, "how differently one would have written in January, 1915. Germany has shown that the Sixteenth Century has not been altogether overpast—at any rate in her own case. And yet the fundamental questions remain, and will re-emerge when the waters abate. Meanwhile the State is proclaiming 'It is necessary to live.' We have forgotten that we are anything but citizens, and the State is having its high midsummer of credit." Nearly four years were to pass after this note was penned, during which the state asserted itself as never before. "The high midsummer of credit," if one may look back upon those years with the feeling that this was a phrase of enduring significance, involved the assertion of state-will and state-intolerance, expressed in governmental regulation and exaction to an extent never before dreamt of. During the war all theories went by the board, and the "state mobilized for war" was a fact before which constitutional guaranties and restraints simply faded away. The war revived nationalism, and the peace was settled upon the basis of an alleged nationalistic *status quo*.

Yet the war also produced opposite effects. In Russia a political organization came forth, and still exists, impossible to define according to the older categories of the state. Along with the new nation-states appeared a new internationalism expressed in the League of Nations Covenant. New theories of sovereignty and of law have sought to find the basis of a single legal order in the world. On the one hand, autocracies have given way in favor of new constitutional democracies, but on the other, new autocracies, appealing at once to nationalistic exclusiveness and greater governmental efficiency, have, at least for a time, silenced the claims of democracy. From both sides we are treated to new theories and new philosophies of the state and government.

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We find ourselves, therefore, in a difficult and very perplexing situation. During the past twenty-five years every assumption of political theory, of the claims of democracy, of limitations upon government, even of the right of the state to be, has been challenged. During the same period, however, the claims of the absolute and intolerant, but not "discredited," state, have been made effective in action as never before.

For political science it might appear that this is a record of confusion worse confounded. Clarification is admittedly no easy task. We have become freed from that traditionally enthralling illusion—the illusion of finality. *Tempora mutant*, not only, but equally important, *nos mutamur in illis*—these are fixed in our consciousness. Not even the theory of a rigid constitution withstands them. If no major premises remain universally valid as to state and government, it is because, notwithstanding Machiavelli and Bacon, we have not been able to discover and to formulate any universally valid dogmas. Although political phenomena have been observed, recorded, discussed, theorized upon, and philosophized about for nearly three thousand years, we have even yet no unvarying generalizations akin to natural laws in the physical world. It is in this sense that we may interpret the opinion of John Adams as expressed in 1813 to Thomas Jefferson: "While all other sciences have advanced, that of government is at a stand, little better practiced now than three or four thousand years ago." In this respect the political scientist is in a worse situation than the economist, who, as soon as he discovers a natural law in the economic world, seems to set about to abate its operation through human enactment.

The sphere of state action and governmental function touches every sort of human interest and activity. Now the services of the state require a multitude of different and specialized agencies which have little in common except that they perform state services. At least so far as our own experience goes, we have largely committed the direction of these agencies to those whose discipline has been that of the law.

II

In a recent presidential address to this Association, the speaker, with that brilliance which we have long been led to expect from him, deplored the lack of creative work in our field. He found us under "a heavy burden of acquired rights and servitudes," first, that of the lawyer; second, that of the historian; third, that of our universities, affecting the present quality of research. "The lawyer is always looking backward," he said, and, also, "the historian looks backward even more intently than the lawyer." The universities do not appear to him to look at all, while research looks with myopic vision. As was said, the habit of thought in politics, in the United States at least, is largely of legal derivation. Yet, judging from results, those American lawyers who have most molded that thought have not been without vision. Hamilton, Webster, and Lincoln were more than lawyers, but so were John Taylor, Calhoun, and Douglas. To stop, however, with this confession and avoidance would be somewhat unfair to those who are giving direction to the course of legal thought in this country—Holmes and Cardozo, to name but two—and to those also who are seeking to free legal education from its heritage of scholastic thought. Insisting upon a background of social science, and with the idea that the law is social engineering in its best sense, several law schools, with the coöperation of many of the leaders of the American bar, may well interpose a caveat to Mr. Beard's spritely generalization.

The assertion is made that the historian, "looking intently backward," makes but few weighty contributions to political science. But if, as he says, "with the possible exception of John Taylor's monumental *Inquiry*, no single immortal work in political science has been written in America since *The Federalist*," the indictment against the historians does not seem severe. Just what makes a work immortal, or even "monumental," cannot be objectively and definitely determined. A political scientist may nevertheless be excused for placing Thucydides and Plutarch alongside of Plato and Aristotle, and the *History of Florence* and the *Observations on the Decades of Livy* by the

historian next the *Prince* by the realist-politician, both the work of the same many-sided Machiavelli. While the immortal *Federalist* was the work of three lawyers, Bryce's *American Commonwealth* came from a scholar at once lawyer and historian. And, after all, one can hardly impute to the historian an obligation, either professional, artistic, or moral, to make contributions to political science. If the historian should succeed in doing so, so much the better for political science, not necessarily so for history. If he does not, it is rather our misfortune than his fault, for he has his own job to do, whether it be an essay upon the administration of the Petty Bag Office, or on the social history of a Nebraska township. With these the political scientist has no more quarrel than with an anthropologist's inquiry into the contents of a kitchen-midden, or the philologist's researches into the Semitic elements in the Bantu dialect, if there be such.

With economics the situation is different. The relations of government with agriculture, industry, and commerce bring political science and economics upon common ground. Taxation, the regulation of public utilities, and transportation are but three of the many subjects which invite approach from both sides. The increasing importance of this type of question is of itself enough to account for the added dependence which political science has upon economics. From the standpoint of administration, the relation is the other way, so that the dependence is mutual. What is true of economics is true also of sociology. The statistical method so largely adopted by the economist and sociologist is recognized by the political scientist as an important instrument in certain of his fields wherein phenomena are observable in the mass. Business has no doubt much to learn from economics, but administration has still much to learn from business, to the extent that the ideals of efficiency in governmental administration are largely the standards of the modern world of business.

A comparative study of the catalogues of American colleges and universities during the past quarter-century reveals the condition of disjointedness which political science presents

today. Twenty-five years ago what courses there were in political science were not only relatively general in content, but more or less related. Considering only curricular offerings to the undergraduate, a chair of political science extends beyond the settee to the bench, nay, to a series of benches. The curriculum will provide courses in government: American, federal, state, local, municipal, British, continental European, and comparative; then in administration: federal, state, local, municipal, and comparative; with, in addition, law: constitutional, international, administrative, with international relations, international organization, and international administration; with courses in political parties thrown in for good measure, in every case with a text-book in the offering. Our college and university catalogues run to seed with courses in political science. No one can be expected to profess them all. The man who is engaged in some of them may have little in common with him who is pursuing others. Municipal administration, for example, has less kinship with international law than it has with taxation. The principal bond of connection is that both are traditionally branches of political science. The conclusion may well be that here, as elsewhere, the French are more logical than we in placing all of these studies in a group as *les sciences politiques*.

The graduate schools follow the system of diversity of courses still further—courses and more courses—with a doctoral dissertation into the bargain. We are, indeed, under no delusions as to the latter. It is a form of exercise, the purpose of which is to ascertain the ability of the relatively mature student to investigate and report through independent exertions upon a self-contained topic. The results may at times be depressing to the reader, and even deadening to the imagination of the author. But even more deadening is that long range of courses taken for credit, by graduates, as well as by undergraduates, with the approved apparatus of text-books and collateral readings. The impact of educational administration has resulted in a system in which semester-credit-hours, of a certain quantity and reputed quality, are sought for *ad nauseam*. The system deprives

the student of the opportunity for broad and leisurely reading, even if the succession of many courses has not already killed his desire to read. An inquiry among doctoral candidates as to what books of known high quality they have read through while graduate students, simply because they wanted to read them, might elicit some surprising answers. If the man responsible for the training of graduate students can, by example and precept, by allusion rather than by direction, create an appetite for reading, he might stimulate the constructive imagination which a certain type of research tends to deaden. In addition, the beginner may be brought to the realization that the great minds are not necessarily wholly of the present, and that *le dernier cri* is not the same thing as the last word.

The past twenty-five years have witnessed great changes in the attitude of universities toward advanced students, actual or prospective. At the beginning of this century, the number of fellowships and scholarships offered was comparatively small. In most of the universities offering graduate work, the man receiving pecuniary aid was the exception, the majority were not dependent upon the university for their maintenance. Today, with the great increase in the number of fellowships, with assistantships, with part or full time instructorships, the graduate student who is wholly dependent upon himself is a rarity. It is not at all for the purpose of decrying a system of substantial aid to the unusually promising mind that this observation is made. It is said because there is great danger in this country in that, by subsidizing so generally all aspirants to advanced study, the graduate schools may find themselves in the situation of some theological seminaries, which have come practically to assure financial aid to every applicant—a policy which is far from one attracting the best minds.

While graduate schools have been developing according to their own ways, bureaus of research have made their appearance, frequently independent of universities, and generally operating in a special field, as in municipal, state, or federal administration. Independently organized, separately financed, and skillfully conducted, such institutions would no doubt gain

little, and lose much, through university support. A sound university policy toward them would seem to be one of sympathy and coöperation, but not of control. Such bureaus, being usually those of applied research, should stimulate pure research in the universities and not lessen it.

Another great change is to be seen in the recent and apparently limitless aids given to research by the various foundations. If in each year the Social Science Research Council can start one genius along the pathway of fearless inquiry it will have done well. It would, however, be disastrous if the generosity of the foundations should tempt the universities to abdicate one of their primary functions. So far, aids to research projects have been given in the main to younger men. If the universities should in any large measure unload their responsibilities for the prosecution of research by their respective staffs upon the foundations, so that the younger men come to look principally to an outside agency for substantial encouragement, the effects will be deadening to the true spirit of universities. With the constant pressure upon university budgets by administrative needs and velleities, such a situation is not altogether improbable, if indeed some indications of the kind are not already observable.

Looking over the list of eminent American historians, it is to be noticed that few have occupied academic positions. Bancroft, Prescott, Motley, Parkman, Rhodes—none of them professed history. But it is also true that none of these lived in an environment wherein a heavy “teaching-load” (phrase of iniquitous import, as smug sounding as foot-pounds or ton-miles!) and a small salary would have made anything more than a desire of accomplishing a *magnum opus* a bitter irony.

III

Those who have labored in the ever-widening field of political science during the life of this Association may not have achieved immortality by their efforts. The record is not to be despised on that account. In the face of bewildering changes, in widely divergent fields, with greatly different interests, with methods

which vary as the fields are different—with all of those shortcomings, as to which many may feel that too much stress has been laid—the contributions of American scholarship to the political sciences have been as substantial as they are various.

The American Political Science Association, as an unofficial national agency for the meeting together of those whose main interests are connected with the scientific study of the organization and functions of the state, has, it is believed, justified the hopes of its founders. Its scope has widened as the fields of interest have widened. It has sought to provide a meeting-ground for those within and without the academic profession. Each group has something to give and something to receive from the other. It has no cause to promote except the search for and entry of truth. "I like better that entry of truth," said Bacon, "which comes peaceably with chalk to mark up those minds which are capable to lodge and harbor it, than that which cometh with pugnacity and contention." It has no creed other than that of tolerance in matters so largely of opinion. It enters upon its second quarter-century modestly proud of its past and grateful to those who, having encouraged and sustained it, have made its past possible and its future certain.

AMERICA'S RÔLE IN THE LEAGUE OF NATIONS

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I. THE ATTITUDE OF THE GOVERNMENT

Whatever may be the present attitude of the people of the United States toward the League of Nations, it now seems clear that the Government of the United States has come to feel the necessity for such an international organization. For several years past, official American coöperation with the League has steadily increased. The situation has now developed to a point where the current formulæ for explaining the official attitude are to some extent misleading, and it may serve a useful purpose to trace the changes which have occurred since 1920, to survey the situation as it now exists, and to forecast some of the probabilities for the future.

Let us start with the fact that the United States has not ratified the Covenant of the League of Nations and has not accepted the place provided for her in the Assembly and the Council of the League. It is beside the present purpose to explain that fact, to attempt to say whether it is due to drift or to design, or to offer any argument for changing it. Whatever the seven millions of voters who constituted President Harding's majority in 1920 may have desired at that time, the Government of the United States has since interpreted their votes as a determination that the United States should not accept membership in the League, and it has proceeded on the theory that that issue is closed. But if this fact is to be taken as the starting-point, there still remains a question as to the account to be taken by the Government of the United States of other important facts, viz., that the League of Nations continues to exist, that more than fifty governments are vigorously pushing its work and effecting through it their coöperative action, and that much of the organized international life of our time is centered at Geneva. Pronouncements made in the

United States some years ago that the League of Nations was dead were based on the assumption that the American election of 1920 could relieve us of the question for all time to come. Such pronouncements having proved to be false, the question which confronted the Government in 1921 still confronts it—with the League of Nations actually in existence, what is to be America's relation to it? The longer the League lives, the more insistent that question becomes.

At first the Department of State ignored the League of Nations. From March 4, 1921, to August 15 following, it did not reply to communications received from the Secretary-General of the League. In the summer of 1921 it even failed to forward—until the failure was exposed—invitations to the American members of the Permanent Court of Arbitration to nominate candidates for the Permanent Court of International Justice. That affront to a large body of American opinion was soon reversed, however, and a more courteous attitude of sending prompt but stereotyped and negative replies was adopted. This policy was continued by the Government for many months after unofficial American organizations, such as the Rockefeller Foundation, and many individual Americans had begun to cooperate wholeheartedly in the work of the League. Then, in course of time, as various matters in which our Government was interested were being dealt with at Geneva, the policy again changed. The formal disinterestedness was superseded by the appointment of official representatives to attend various League conferences. The appointments were always carefully safeguarded, however, and they were camouflaged with various formulæ tending to indicate that the official action of the United States was not official. For example, in 1923, Miss Grace Abbott, chief of the Childrens' Bureau, was named to attend a meeting of the League of Nations Committee on Traffic in Women and Children. Her appointment was designed to give satisfaction to those people who were pressing for cooperative action by our Government; but to satisfy the opponents of such action at the same time, Miss Abbott was sent to act "in an unofficial and consultative capacity." That formula served

for some years as a bridge between Washington and Geneva. But the bridge was too frail for any heavy traffic, and it soon broke down. The election of 1924 paved the way to more confident action by our Government, and the year 1925 saw the American Government represented, as states members of the League of Nations were represented, at two important conferences held in Geneva—the Conference on Opium and the Arms Traffic Conference. This policy of regular representation at special conferences held under the auspices of the League of Nations has been continued since 1925. During 1927 the Government of the United States was represented at four important conferences called by the Council of the League of Nations—the Economic Conference, the Transit and Communications Conference, the Conference on Import and Export Prohibitions and Restrictions, and the Preparatory Disarmament Commission; and during 1928 the United States was represented at three important diplomatic conferences held under League auspices—a second Conference on Import and Export Prohibitions and Restrictions, a Conference on Double Taxation and Tax Evasion, and a Conference on Economic Statistics.

When this era of coöperation by the Government of the United States was begun, it was with an air of concealment, and Americans charged with particular missions found themselves compelled to gumshoe their way. But recently a change has occurred. The policy of coöperation is now being avowed by high officials, and perhaps the psychology of those who have some political independence has begun to be affected by the avowal. In a pamphlet widely distributed by the Republican national committee in 1928, Secretary Kellogg stated that "the Government of the United States has continued its policy of friendly and helpful coöperation with the League of Nations on subjects of international humanitarian concern;" and he spoke of the "willingness of the United States to coöperate freely, fully, and helpfully with the League in matters of genuine international concern." Mr. Ogden L. Mills, under-secretary of the Treasury, writing in *Foreign Affairs* (for June,

1928) stated that "this Government has at all times pursued a policy of friendly coöperation with the League;" and he praised the attempt "which this country has made to be helpful in furthering any well-directed efforts toward better international conditions, whether such efforts have originated with the League or with any other agency."

Perhaps the change in four years is best indicated by the difference between the Republican platform in 1924 and the Republican platform in 1928. In 1924, it was sufficient for the Republican convention to declare: "The Republican party maintains the traditional American policy of non-interference in the political affairs of other nations. This Government has definitely refused membership in the League of Nations and to assume any obligations under the Covenant of the League. On this we stand." In 1928, although this language was repeated, the following was added: "In accordance, however, with the long-established American practice of giving aid and assistance to other peoples, we have most usefully assisted by coöperation in the humanitarian and technical work undertaken by the League, without involving ourselves in European politics by accepting membership." This declaration is generally significant for its effect on the partisan color which had previously been given to the question of American membership in the League of Nations. The assumption that the Democratic party favors the League of Nations and that the Republican party opposes it cannot long survive the failure of the Democratic party to mention the League in its platform of 1928 and the avowed willingness of the Republican party to continue "coöperation in the humanitarian and technical work undertaken by the League." Certainly an advance toward a more intelligent consideration of the subject will have been made when party division on the question disappears. The Republican leaders now seem to desire, however, to make capital out of the coöperation which has been begun, and their description of what has happened during the past four years has tended to create an impression that the United States is really launched upon a policy of complete coöperation with those phases of the

work of the League of Nations which are generally referred to as "non-political." The facts will bear some examination to see just how far our coöperation has gone and how far the policy avowed is actually being carried out.

To appeal to a certain altruistic group, our Government's attitude is described in terms which would indicate that official American coöperation with the League of Nations is undertaken for the purpose of "helping" other peoples. The situation which existed immediately after the war lent itself to the insistence that America should "help" Europe, and unfortunately membership in the League was often advocated on that basis. The United States was more favorably situated than any European country; it was actively distributing relief in many parts of Europe; the problems of post-war reconstruction were so baffling that Europe was calling upon America to assist with money and materials. But that situation has long since passed. The degree of future American coöperation with other governments through such an organization as the League of Nations does not depend upon an American desire to help other countries. It depends rather on the American desire to help America. Other countries do not think of their membership in the League as "helping" their co-members. Nor did the Government of the United States use such language as that of the 1928 Republican platform when, at the second Conference on Import and Export Prohibitions and Restrictions, in July, 1928, its representative protested against French restrictions on the importation of cinema films. Those enthusiasts in the United States who have advocated the League mainly on a basis of rendering aid to other countries have done a disservice to the cause of international coöperation. A policy of helpfulness to others may be adopted for an emergency, but it cannot long serve as a basis of continuous action. To explain the American coöperation on any such ground is to give it an appearance of hypocritical unreality.

A more straightforward explanation was given by Secretary Hughes in an address to the New York Republican State Convention, on April 15, 1924: "There is no more difficulty in

p15159

dealing with the organization of the League in this way for the purpose of protecting our interests or furthering our policies than there would be in dealing with the British Empire. Because several nations have formed an organization of which we are not a part is no reason why we cannot cooperate in all matters affecting our proper concern. We simply adjust our forms of contact and negotiation to the existing conditions. The matter of real importance is with respect to the subjects we take up. We do not take up subjects which involve political entanglements. We do not take up subjects which would draw us into matters not approved by American sentiment. When we do take up a subject, it is because this Government desires it to be taken up, and the same would be true under any form of action."

Apart from the purpose of American action, however, it would seem useful to inquire just what is the extent of American cooperation, and how far it may be true that "we have most usefully assisted by cooperation in the humanitarian and technical work undertaken by the League." Let us examine the way in which the United States has carried out what Secretary Kellogg has described as its "policy of friendly and helpful cooperation with the League of Nations on subjects of international concern."

II. EXTENT OF AMERICAN COÖPERATION

The outstanding activity of the League of Nations to be described as a "subject of international humanitarian concern" is its work in the field of public health. For more than a generation, it has been recognized that national public health work depends upon international cooperation. Since 1907, the United States has been a party to the treaty creating the International Public Health Office in Paris. The work of that office had not given general satisfaction, and when the League of Nations Health Committee was created in 1921, there was a general desire to transfer its functions to the new committee. This was opposed by the United States, and the opposition almost wrecked the plans for utilizing the League machinery in this

field. At the Paris Conference in 1926 our representative insisted on continuing the old Office. At the same time, our surgeon-general, Dr. Hugh S. Cumming, paid high tribute to the work done at Geneva. Everywhere the League's record in this field is today acclaimed. The international interchanges of public health personnel, of which twenty-eight have been held since 1922, have made notable progress toward giving the world a single language of public health administration. The results of the League's epidemiological intelligence service have become indispensable to health officials of all countries. The conferences on standardization of sera have had a remarkable success. Yet in all of its work in this field, the League has had little official support from the United States. Surgeon-General Cumming sits as a member of the League's Health Committee, but he represents the Office at Paris and not the Government at Washington. Some twenty American public health officials have participated in the interchanges which have been arranged, and many individual Americans have coöperated in the health work in some capacity. The budget of the League's Health Committee during the past eight years has been in excess of two million dollars; and although about forty per cent of this has been contributed by the Rockefeller Foundation, no part of the expense has been borne by the United States. The people of the United States would doubtless be the last to be willing to see the health work of the League discontinued. Yet our Government has had little share in it to date, and when it has coöperated, its representatives have been circumscribed by the official aloofness prevailing in Washington.

A second activity to which Secretary Kellogg's formula will apply is the work of the League in connection with the traffic in opium and dangerous drugs. In 1912, and for several years before, the United States played a leading rôle in the efforts which led to the signing of an Opium Convention at The Hague. This provided for an exchange of information to be effected through the Dutch Government. American insistence in 1919 led to a provision in the Covenant for entrusting the League with general supervision over the execution of agreements with

regard to the traffic in opium. In 1920, the Dutch Government asked all the signatories of the Hague Convention to agree to a transfer of its responsibility to the Secretariat of the League of Nations, and all of the signatories agreed except the United States. Even Germany agreed, though she was not then a member of the League. This anomalous position of the United States still continues, as was indicated recently when the Government of the United States reported to the Netherlands Government a seizure of drugs at Akron, Ohio, on March 29, 1928. These drugs were said to have been shipped from Italy, and their seizure raised an important international question. The Netherlands Government transmitted the American information to the League Secretariat, which reported it to other governments. Any other government would have avoided such circuitous action, and the consequent delay, by communicating the information directly to the Secretariat at Geneva.

The United States has been represented at various meetings of the League's Advisory Committee on the Traffic in Opium and other Dangerous Drugs, and our representatives there still act "unofficially." In February, 1928, the Secretary-General was informed that the United States was "desirous of continuing to coöperate with other nations" in this work, and that the American consul at Geneva would attend the meeting of the committee "unofficially." Of course the United States is not represented in the Council to which this committee reports. The United States was also represented at the conference in 1925 which drew up a new Opium Convention; but the American representatives there were adamant in their insistence on dealing, not with the various governments represented, but with all of them taken as an "entity" called the League, a method which broke down completely. As a consequence, the Opium Convention of February 19, 1925, has not been signed by the United States, though it has been signed or adhered to by not less than forty-four countries and has recently been brought into force among eighteen of them. This convention provides for the creation of a permanent central board to deal with various opium questions, the members of which are to be appointed by the

Council and the United States; but our Government has refused to participate in making such appointments. To a limited extent, the United States has been "helpful" in this effort to control the traffic in opium, acting chiefly for its own self-protection; but it has by no means played a leading rôle. It has lagged behind opinion in other countries, and it has made the functioning of League machinery more difficult.

The suppression of the traffic in women and children is clearly a subject, also, which falls into Secretary Kellogg's category. In 1921, when the United States was invited to send representatives to a diplomatic conference called by the Council of the League to deal with this subject, our consul at Geneva called on the Secretary-General to say that the invitation was not to be accepted. Nor has our Government signed the treaty which that conference drew up, and which is now in force for more than thirty other countries. The Government of the United States has been represented at some of the meetings of the permanent committee dealing with the subject, but intermittently and by representatives acting only in an "unofficial" capacity. No part of the expense of this committee has been borne by the United States, nor of the documents which it has produced. In 1923 the Council decided to authorize a special investigation of the international traffic in women and girls, and the unofficial American Bureau of Social Hygiene financed the investigation. Great interest was manifested in the United States in the report which was presented, but no part of the moral or financial responsibility for it was borne by the Government of the United States.

Two other distinctly "humanitarian" efforts of the League have borne fruit in the treaty of September 12, 1923, concerning the suppression of the traffic in obscene publications, and the treaty of September 25, 1926, concerning the abolition of slavery. Both of these treaties deal with matters of clearly international interest, and both have been submitted to our Senate for consent to ratification. Yet we were represented only by an observer when the former treaty was drawn, and when the Slavery Convention was being drafted in 1925, our

Government contented itself with informing the Secretary-General of the League that slavery had been abolished in the United States.

To turn from the activities which Secretary Kellogg describes as "humanitarian" to those which the Republican platform calls "technical," one of the great services rendered by the League has been its registration of international treaties and engagements and its publication of the texts in the League of Nations treaty series. Not only does this serve to protect all states against secret treaties, but it serves also to furnish the whole world with a convenient compendium of the world's treaty law, of which the need had been felt long before the war. The members of the League are under an obligation to register their treaties under Article 18 of the Covenant; but without any such obligation other states may avail themselves of the registry. Long before her membership in the League, Germany regularly registered her treaties, and Ecuador, which is not a member, has also done so. But the United States did not reply to the League's invitation of July 16, 1920, to register its treaties, and our treaties are usually registered by the other states with which they are made. Here is a place where the United States could be "helpful" in encouraging the abolition of secret engagements, and without any kind of involvement. But we have left this movement to be advanced by other countries. In eight years, more than 1,900 treaties and engagements have been registered with the Secretariat, and seventy-three volumes of the texts have been published. In 1925, the Department of State agreed to send to the Secretariat printed copies of United States treaties appearing in our own treaty series and stated that no objection would be offered to their publication in the League treaty series. Even this very limited action by the United States has been "helpful" to the people in all countries, including the United States, who must use the treaty series; for the Secretariat has established a new numbering of treaties in the treaty series for treaties published but not registered, and three treaties between the United States and Mexico, both non-members of the League, have thus

been included in the series. But a real policy of coöperating "freely, fully, and helpfully," such as Secretary Kellogg announces, would certainly call for registration of its treaties and engagements by the United States, and no commitment would be involved if the Secretary of State should inaugurate the practice of communicating the texts for that purpose.

The economic work of the League of Nations is now taking on such importance that it cannot be ignored by the United States, and for two years the Government at Washington has given increasing attention to it. Our official participation in the Economic Conference in 1927 and in the two conferences of 1927 and 1928 on Import and Export Prohibitions and Restrictions is, perhaps, only a beginning. International conventions on various subjects are now being proposed which the United States cannot allow to be concluded without its collaboration. We have quite recently been represented at the Conference on Double Taxation and Tax Evasion and at the Conference on Economic Statistics. An important draft convention on the treatment of foreigners, drawn by the League's Economic Committee, has been communicated to governments for their opinions as to whether it would serve as the basis of the work of an international conference; if such a conference is held, of course the United States must be represented. But the Government of the United States has no part in controlling the work of the Economic Committee because it is not represented on the Council. Individual Americans are coöperating—Mr. Lucius R. Eastman on the Economic Committee, Mr. Jeremiah Smith on the Financial Committee, and Mr. Roland Boyden and Dr. Alonzo Taylor on the Economic Consultative Committee; but our Government has no voice in saying what will be initiated, nor in the preparations for diplomatic conferences to be held.

The work of the International Labor Organization of the League of Nations may be said to be both "humanitarian and technical." Eleven Labor Conferences have been held, from which a large body of labor legislation has emanated. Some of the twenty-six labor conventions have been generally ratified.

Moreover, the International Labor Office has become in eight years an indispensable agency for the independent investigation of industrial problems of interest to a more general public than employers and workers. Yet in all this work no voice is raised on behalf of the Government of the United States. We have had no official representation at any of the annual conferences. Though many individual Americans have had a share in this work, our Government has not found one place where it could "help." If our policy is really one of "coöperating freely, fully, and helpfully" with the League, surely we should accept membership in the International Labor Organization with more than fifty other states—and a special article of its constitution limiting the responsibility of federal states would obviate any difficulty which might otherwise be raised because of our constitutional system. Our increasing dependence on foreign trade makes it of vital interest to us to overcome the competition of our own labor with that of countries of lower standards of living, and a selfish interest of the United States might be relied upon as the basis of our encouraging the approach to higher industrial levels abroad, even if we have no desire to "help" other countries in this field.

Codification of international law is another "technical" subject in which American leaders often proclaim an interest, and in 1928 the Republican party pledged itself to aid in promoting the "perfection of the principles of international law." Since 1924 the League of Nations has had a committee of experts at work endeavoring to say what subjects are ripe for codification. Mr. George W. Wickersham serves as a member of this committee, acting in his individual capacity. The Government of the United States has replied to the committee's questionnaires, but it enjoys no part in forming the final judgment based on the various replies. Hence, in 1927, when the Assembly took a decision to hold a conference to deal with the codification of three subjects, and when preparations for this conference were begun, the United States Government had no part in that decision and in such preparations. Yet our own interest will make it necessary for us to participate in the con-

ference when it is held. The measures which have been taken to date have proved somewhat expensive, also, but our Government has not "helped" by bearing any part of the expense.

III. SHOULDERING THE FINANCIAL BURDEN

The coöperation which Secretary Kellogg acclaims presupposes that a League exists which other nations are supporting, in which we may coöperate. It presupposes not only that the initiative has been taken by other governments, but also that they are bearing the expense of maintaining a machinery with which the coöperation may be carried on. Our failure to contribute to that initiative is the serious shortcoming of these past eight years; but our position becomes clearer when our financial contribution is compared with that of other governments. Since 1920, Great Britain (exclusive of the British dominions, the Irish Free State, and India) has contributed about \$3,500,000 to the expenses of the League of Nations, and her annual contribution at the present time is approximately \$500,000. In these eight years the United States has contributed about \$22,000 to the League of Nations. An analysis of the items may indicate the limited character of our participation. In 1923 we paid the League 350 Swiss francs (about \$75) for our share of the expense of a staff borrowed from the League by the Commission of Jurists which met at The Hague under a resolution of the Washington Conference. In 1925 we paid the League about \$2,000 for our share of the expense of the Opium Conference, and \$2,700 for our share of the expense of the Arms Traffic Conference. In January, 1928, we paid the treasurer of the League about \$5,400 toward the expenses of the Preparatory Commission for the Disarmament Conference, \$600 toward the expenses of the 1927 Conference on Communications and Transit, \$10,000 toward the expenses of the Economic Conference, and \$350 toward the expenses of the Conference on Import and Export Prohibitions and Restrictions; and at the time the Department of State announced that "the American contribution is the same as the British, which is the largest sum hitherto paid by any country."

These are all of America's payments to the date of this writing. Each of these items represents expenditure for a special activity of the League. But for the general expense of keeping such an organization going, so that we may coöperate in what other nations decide to undertake—for headquarters at Geneva, for salaries of permanent officials, for the printing of documents and the expense of communication with governments—we pay nothing.

IV. WHAT COÖPERATION MIGHT MEAN

The present situation, then, would seem to be this: more than fifty other peoples are maintaining an organization for international coöperation with reference to a variety of subjects, and the United States joins in such coöperation, to a very limited extent, after it has been put under way. Numerous multilateral conventions have resulted from it, constituting for most of the world a new body of international law. None of these conventions has been ratified by the United States, though four of them have been submitted to our Senate and three others have recently been signed by our representatives. In the use of the quasi-administrative machinery which exists, the United States either acts "unofficially" or in most instances not at all. And from such permanent coöperative undertakings as the registration of treaties we still abstain.

Now this situation may continue. It is certain to do so as long as the most extreme opinion expressed on Capitol Hill is taken as the measure of American policy at the other end of Pennsylvania Avenue. But it has a distinct danger for the United States. It frequently subjects us in our coöperation to decisions which are taken without our participation. Representatives of other Powers decide what is to be undertaken; they determine what conferences are to be held and what subjects each is to consider; and they are in complete charge of the preparations for conferences in advance. We have none of the initiative, we do not have a part in shaping the agenda, and our representatives arrive at a League conference to find a chairman already chosen by the Council of the League and preparations advanced to a great extent by League committees

over which our Government has no control. And yet we must take part in the conferences, for the simple reason that our own interests demand our representation when certain subjects of international importance are under consideration. In a sense, our coöperation with the League is not of our own choosing. We simply cannot afford to sit out when fifty other governments are sitting in. A part of the American public may continue to believe that we wish to be "helpful," but the Government must see that we are safe.

It would seem that a policy of "free, full, and helpful coöperation" in the League should mean a very different rôle for the United States. When the United States has a secretary of state who is not dominated by a small minority in the Senate, he will find a very different course to follow in translating that formula into fact. He will first of all announce, without any pretense of "helping" other peoples, that we propose to join openly with other governments in dealing through the League of Nations with those problems which in a shrinking world are common to all peoples. He will seek for the United States, with or without any formal action on the Covenant, a voice in the different organs of the League and in its permanent committees. He will from time to time propose that certain subjects be dealt with by the use of the Geneva machinery. He will, of course, see that the United States pays a fair share of the expenses, both the special and the running expenses of current international coöperation. He will train a staff in the Department of State to represent us in the work of the League. He will see that the American public has available to it the excellent documentation which is now being produced at Geneva. In short, he will abandon our present policy of following where fifty other governments point the way, and he will recover for America a share in the leadership in international coöperative action. When that time comes—and it seems probable that it will come—it will not be necessary for the American people to be cajoled with any thought of their righteousness in "helping" others. We can then discuss the problems of international coöperation on the basis of our conceptions of the interests of the United States as a part of the whole community of nations.

ADMINISTRATIVE LAW AND THE CONSTITUTION

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In the constitution of Massachusetts is found the following: "In the government of this commonwealth the legislative department shall never exercise the executive and judicial powers or either of them; the executive shall never exercise the legislative and judicial powers or either of them; the judicial shall never exercise the legislative and executive powers or either of them; to the end it may be a government of laws and not of men." This is probably the most explicit statement of the doctrine of separation of powers to be found in the constitution of any of the states of this Union. While the doctrine has been set forth in other constitutions in other language, the constitutions of all the states as construed and interpreted have come to have substantially the same meaning. For more than a century, lawyers, courts, political scientists, publicists, and the people generally regarded the separation of the government into coördinate departments as one of the corner-stones of our liberties.

Montesquieu, who had no doubt derived his ideas upon the subject from the writings of Locke and a study of English law, in 1748 published his great work, *The Spirit of Laws*. In this treatise he gave a new exposition of the doctrine of separation of powers and the reasons for it, in a form which gave it wide currency in the English-speaking world; but this exposition was intended by Montesquieu to be a statement of political theory, and was so accepted by political writers of the time. Because of its wide currency, it profoundly influenced political thought during the years immediately preceding the adoption of the Constitution of the United States. While the Constitution of the United States contains no declaration upon the subject, nevertheless it was framed with due regard to the

doctrine of the separation of powers. By it the legislative power is vested in Congress, the executive power is vested in the President of the United States, and the judicial power is vested in one Supreme Court "and in such inferior courts as Congress may from time to time ordain and establish." It was early held that, the separate powers being vested in separate departments by the Constitution itself, one power could not be vested in representatives of another department by act of Congress; so that in legal effect the method adopted in the formation of the Constitution of the United States was equivalent to the explicit declaration of the constitution of the state of Massachusetts.

The doctrine that the primary powers of government cannot be redelegated has had a long and interesting development in American law. At an early time it was recognized that in practice a complete separation of powers was not possible, and it soon became apparent that no satisfactory definition of executive, legislative, or judicial power could be made. While jurists have had a fairly clear conception of what was meant by these terms, and while they can be defined for some purposes, all attempts to make a comprehensive, all-inclusive, accurate definition have failed. As a matter of fact, the powers have never in actual practice been scientifically or completely separated. They are overlapping, and of necessity must be so. An executive officer must, in the performance of his statutory duties, construe and apply the law. When courts reach out and by means of a receiver operate a great system of railways, they are discharging administrative and executive duties which have historically found their way into the judicial department. Most constitutions reserve to legislatures in express terms the right to exercise certain kinds of judicial power.

While the doctrine of separation of powers and its corollary that a power once vested may not be redelegated have engaged the attention of jurists and publicists from the beginning, the whole matter was given a new significance and a vastly increased importance with the advent and development of administrative law.

The rapid growth and development of administrative agencies during the last half-century, in this country as well as in England, have brought profound changes in the political and legal structure and a recasting of political and legal theory in both countries. Writing about 1885, A. V. Dicey said that the words "administrative law" were "unknown to English judges and counsel, and are in themselves hardly intelligible without further explanation." Thirty years, however, worked a complete change in Mr. Dicey's notions of administrative law. Writing in 1915, he said: "The objection to bestowing upon the Government of the day, or upon the servants of the Crown who come within the control or the influence of the Cabinet, functions which in their nature belong to the law courts, is obvious. Such transference of authority saps the foundation of that rule of law which has been for generations a leading feature of the English Constitution. But we must remember that when the State undertakes the management of business properly so-called, and business which hitherto has been carried on by each individual citizen simply with a view to his own interest, the Government, or, in the language of English law, the servants of the Crown, will be found to need that freedom of action necessarily possessed by every private person in the management of his own personal concerns."

The *Arlidge* case (1915) marks a turning point in the history of English law. In that case it was held that judicial power could be delegated to an administrative body; that the power so delegated might be exercised in accordance with rules made by the administrative body and need not be exercised according to the course of the common law.

In England and in France, the doctrine of the separation of powers has remained a matter of political theory. In this country, by reason of our formal written constitutions, it has become a rule of law. If the doctrine is to be applied without limitation or restraint, and all powers of government are embraced in the three coördinate departments and no power so delegated can be redelegated or two or more powers be combined, it is quite apparent that our institutions can develop

only in certain parallel lanes. In this country, the attempt to create subordinate administrative tribunals was for a long time hampered and partially frustrated because no authority of practical consequence could be conferred upon a tribunal which did not, in varying degrees, combine the executive, legislative, and judicial powers or two of them. Because of the difficulty of defining and setting limits to these powers, the question of whether or not an act creating an administrative agency amounted to an unconstitutional delegation of power always remained doubtful until the question was passed upon by a court of last resort.

Administrative tribunals, often spoken of as bureaus, boards, or commissions, did not come because any one wanted them to come. They came because there seemed to be no other practical way of carrying on the affairs of government and discharging the duties and obligations which an increasingly complex social organization made it necessary for the government to perform. Under our system of law there was no place in constitutional theory for the development of these subordinate tribunals. Because of overpowering necessity, they were finally admitted into the legal system in various disguises. It was held that power to make rules and regulations, although such rules and regulations have the force and effect of law, was not, within certain limitations, an unconstitutional delegation of legislative power. On the ground that an administrative tribunal might be required to find certain facts existing in theory, the delegation of what amounts to a combination of legislative and judicial power was conferred upon these tribunals, and such delegation of power has been repeatedly sustained.

The executive committee of the constitutional convention of 1921, in a report to the legislature of the state of New York, said: "The tendency to extend the activities of the state has been world-wide, for manifestations of it are observable in every country, whatever the form of government may be. The Great War has markedly, if not portentously, accelerated this tendency. In the United States, there are everywhere being developed at enormous cost in the most intensive fashion a multi-

tudinous bureaucracy with autocratic powers and arbitrary discretion, and a vast system of complicated and often conflicting administrative jurisdictions in relation to property and businesses and personal conduct, which reach and affect almost every individual, and most of which, only a few years ago, would have been regarded as of strictly private concern and not to be tolerated by a free people."

It is a matter of common knowledge that the development of administrative tribunals has been opposed at every point, with varying success. It is also true that those who have opposed the creation and extension of administrative tribunals have as a rule had the best of the argument on legal and constitutional grounds, but have been obliged to yield to an irresistible social pressure. If the advent and growth of administrative law in our legal system is inevitable, it is manifest that time and energy spent to prevent it is time and energy wasted. In the end a much better result would be attained if the inevitability of the process were frankly recognized and an intelligent effort made to direct and wisely circumscribe the development of this branch of our law. An attempt to fit administrative law into our legal system without recognizing that there is no place for it if the doctrine of the separation of powers is to be applied as it was understood in the early nineteenth century is an attempt to attain the unattainable. The friends and the foes of administrative law agree that it is here, that it is here to stay, and that it is necessary to the proper functioning of government. Would it not be wiser to recognize this fact, to give it a place in our legal system, to acknowledge unequivocally its real nature, and to avail ourselves of the experience of those jurisdictions in which it has had its greatest development, to the end that it may not become, as many well informed lawyers and publicists believe that it will become, a source of tyranny and oppression?

In admitting administrative law into our constitutional system we have indulged in a certain amount of formula worship which is of doubtful value. Why say that the power exercised by a board or commission is quasi-judicial and not judicial,

when the only difference between what is admittedly the exercise of judicial power and the exercise of so-called quasi-judicial power is the subject matter with which the power deals? If a workman's compensation board holds after investigation, with or without a hearing, that an employer has violated a safety place statute, and that as a consequence the employer shall pay to the injured employee fifteen per cent more than the normal compensation because of such violation, how are we to distinguish between the power so exercised and the power that the court exercises when, upon the same state of facts, the employer being properly before it, the court finds the employer guilty under the statute and adjudges him to pay a fine of one hundred dollars? There are cases which attempt to point out a distinction, but the distinctions pointed out are unreal and in many instances fanciful.

It is conceded that a reasonable rate for a service rendered to the public, so far as the power of the court to deal with it is concerned, is one not so high, on the one hand, as to be oppressive or extortionate for the service rendered, or so low, on the other hand, as to deprive the one who furnishes it of just compensation. A utility commission may choose any rate which lies within this zone, and its determination may not be disturbed by a court. It is idle to say that there is but one just and reasonable rate, and that it is the duty of the commission to discover that one as a fact, when the commission as a matter of discretion chooses the rate which will best serve the interests of the public. The zone within which the commission may make its choice of a rate is of the same extent as the zone within which the legislature may select a rate by direct enactment for the same reasons. Nothing is gained by saying that one is the exercise of legislative power and the other the exercise of a power to determine a fact or make a rule. The sovereign authority speaks with the same legal consequences in each case. In his address to the American Bar Association in 1916, Mr. Elihu Root said: "Before these [administrative] agencies the old doctrine prohibiting the delegation of legislative power has virtually retired from the field and given up the fight."

Why should legislatures and courts in dealing with administrative law be hampered because they are obliged to start their consideration with an unsound premise?

At the present time, legislatures are in doubt as to what they may and may not do without violating the constitution. Because of this doubt, they oftentimes pursue a policy of evasion in an attempt to avoid limitations, real or supposed. It being conceded that the doctrine of the separation and delegation of powers is applicable only to a limited extent, should not the courts, as a matter of sound judicial policy, deduce from the statutes and cases the limits within which the powers may be delegated and combined? No one would claim that the power to adjudicate controversies relating to common law rights should or could be delegated to a commission. But the power to determine rights created by a statute may well fall in a different class. If the controversies in legislatures related more to that which should be done in the public interest rather than what it is possible to do in the face of constitutional limitations, a better result would be obtained. If legislatures realized that the rights of citizens depended upon the legislative restraints placed upon the exercise of delegated power rather than the constitutional restraints upon the exercise of the three coordinate powers, they would hesitate to endow their creations with undefined and illimitable powers. An attempt by a legislature to prescribe methods of procedure for administrative tribunals often results in a measure being declared unconstitutional, whereas a power granted in the broadest and most general terms is frequently sustained because no method of exercising the power is prescribed. There would be less of legislative experimentation with constitutional power if legislatures realized more definitely their responsibility in the premises. The frequency with which laws are declared unconstitutional has created a feeling in the public, as well as in the legislative, mind that the courts, or if not the courts then the constitution, is chargeable with the responsibility for bad laws. One of the undesirable results of the constitutional, as opposed to the parliamentary, system is that it engenders

in our lawmakers a feeling that they are not directly responsible for the consequences of a law if the law is constitutional. In the public mind the responsibility for bad law is placed upon the courts. The public feels that if a law were bad the courts would have declared it unconstitutional. Courts, in fact, have no concern with the policies of laws as such, and can hold a law invalid only when it offends a particular constitutional provision.

For these and many other reasons, why should we not, as rapidly as is possible and consistent with precedent, move to a sounder position in regard to administrative law?

If we acknowledge in legal theory what exists in fact in the development of administrative law in our legal system, there will still remain many problems to be solved. The character of these problems is such that there should be brought to their solution the wisest and ablest men to be found in the legal profession, as well as the ablest publicists and political scientists. We need not be much impressed by the fears and forebodings of those to whom all change is anathema. There exists, however, a great body of opinion entertained by those who are entitled to our respect and in whose judgment we have confidence, that the consequences foreseen by Montesquieu will ensue if some limit is not set to the creation of administrative agencies with powers so broad as to make them at once legislatures and courts. We have today administrative agencies regulating public utility corporations, business affected with a public interest, professions, trades and callings, rates and prices; laws for the protection of the public health and safety and the promotion of public convenience and advantage; examining boards and other bodies to pass on the competency, responsibility, or other qualifications of private schools, chauffeurs, engineers, surveyors, private detectives, real estate brokers, stockbrokers, teachers, chiropodists, nurses, public accountants, shorthand reporters, physicians and surgeons, midwives, peddlers, lawyers, dentists, pharmacists, plumbers, undertakers, embalmers, veterinarians, optometrists, architects, beauty parlor operators, employees of the state and its civil divisions, and other professions, trades, and callings; also boards and commissioners of educa-

tion, public service commissions, probation commissions, parole boards, athletic commissions to regulate boxing and wrestling contests, racing commissions, bank examiners, insurance departments, transit commissions, health boards (with divisions for the safeguarding of motherhood, saving of infant life, and instruction in child hygiene), child welfare boards, tax commissions, tenement house commissions, building commissions, water power commissions, water control commissions, commissions for the blind and for mental defectives, recreation commissions, boards of charities, agricultural commissions, conservation commissions, workmen's compensation and industrial commissions, boards of child welfare for the granting of mothers' pensions, motion picture commissions; and in the United States the Interstate Commerce Commission, the Federal Trade Commission, the Railroad Labor Board, the various officers which supervise and regulate internal revenue, and many other persons and groups exercising a vast power that is granted in the most general and unrestrained terms. It is quite apparent that the law does not propose to be left behind in the urge for complexity which seems to be so characteristic of our age.

In the very nature of things, it was inevitable that an expanding body of law which had no recognized place in our legal system should at some point or points come in contact with the established legal order and oppose itself to established practice. The doctrine of the non-delegation of governmental power had sufficient force and vitality to set limits for a time to the process of development; and while it is true that there yet remain some kinds of legislative power which may not be delegated, some kinds of judicial power which may not be delegated, and while it is still held that there cannot be a cross-delegation of powers so as to work a combination of them in a single individual or group, these ideas have lost their vitality, and in many instances are frankly ignored.

Let us consider some of the points of impact of administrative law upon our constitutional system. The point where the irresistible force of growing administrative law most directly

collides with the immovable body of law is as to the right of a party to have a review of a determination made by an administrative tribunal. In the estimation of English-speaking people generally, a right of review is no less sacred than the right to be heard in the first instance. Historically, a review was given as a matter of privilege and not of right. The cases in which a review would be granted were determined by the reviewing body. The practice of this group grew into a rule and the rule into a law. The constitution of the state of Wisconsin provides that "writs of error [the right to a review] shall never be prohibited by law." In the earlier laws creating administrative boards and commissions, great care was exercised to provide for a right of review, but the tendency has been in recent years to limit the right in one way or another. In general, the method employed has been to prescribe that the findings of fact made by the administrative tribunal shall be conclusive upon the reviewing body. Manifestly, such a provision as this (and such provisions are not uncommon) makes it possible for a commission to base an award upon findings so opposed to the actual facts in the case that one's natural sense of justice revolts. Nevertheless, the person against whom the award is made is without legal remedy.

As might be expected in so important a matter, there is a sharp conflict of opinion. At one extreme are those who believe that the determination of administrative bodies should be subject to no review by the courts, thus placing them in the class of courts which administer the *droit administratif* of France. At the other extreme are those of the common law school who believe that every determination should be subject to a full court review. Manifestly, the determination of the extent to which a review should be had involves questions of public policy of the greatest importance. Should the public mind ever become imbued with the idea that administrative agencies are tyrannical, oppressive, and beyond the reach of the law courts, the whole system might conceivably be overthrown. On the other hand, if the views of the extreme common law school should prevail, the effectiveness of administrative agencies

might be destroyed and their functions paralyzed. One of the most persuasive arguments against a too generous employment of the right to a judicial review is the fact that courts are not equipped to review findings of fact in many technical fields. A judge, in order to be properly equipped to make an intelligent review of findings of valuation of a public utility, in addition to being a lawyer, should be an expert accountant, an engineer, an experienced operator, and a financier. An admission that he is not thus equipped may be made by any judge without a blush of shame. On the other hand, an unintelligent, improperly equipped administrative body, ignorant of fundamental legal principles, may by its findings and orders do such great injustice that one who suffers therefrom ought, according to the conceptions of justice which obtain among Anglo-American peoples, to be entitled to have them reviewed. Here we come to an impasse in the development of administrative law under our constitutional system, especially in the major fields such as regulation of public utilities, sale of securities, and workman's compensation acts.

The case for making final the determination of administrative tribunals has been stated as follows: "The effectiveness of the orders of the commission . . . is largely determined by the conclusiveness of its findings. For the commission to be most efficient and of the greatest practical value, its orders and regulations, issued after due investigation, must become and remain effective with the final disposition of the commission. The necessary delays attending review by the courts and their lack of time and opportunity for investigating situations at first hand and as a current operating concern, constitute at once the occasion and the chief reason for commission control."

The view of business upon this proposition has been stated thus: "The main principle on which the government of the United States rests is that it should be a government of laws and not of men; that no one should have his life, liberty, or property taken without the right to appeal to the courts to determine if the taking is just. The doctrine that regulating commissions or other administrative bodies should be given an

arbitrary power over public utilities is simply the doctrine that the property rights of the owners of public utilities should not be given the same protection as the property rights of other persons."

There can be no reasonable doubt that by the creation of administrative agencies, and by granting to these agencies combined powers to be exercised in a particular case in the discretion of the agent, whether the agent be a single person or a group, we are on our way back to that condition of affairs which existed prior to the promulgation of the doctrine of separation of powers and its incorporation by statute and decision into the body of Anglo-American law. It has been our proudest boast that ours is a government of laws and not of men. While it is true that in Anglo-American law there has been vested in judicial officers a large discretion, that discretion has not been an arbitrary one, and it has not in fact, except in rare instances, been exercised in a capricious and arbitrary way. The regard of judges (who are men trained in the law) for fundamental principles, combined with the force of public opinion, has operated as a sufficient restraint upon the exercise of that power. The slightest departure on the part of the courts from a standard which the public thinks they should observe produces a wave of popular feeling which is indicative of the jealousy with which people look upon the exercise of discretion, even by courts. Witness the discussion in the public press, informed and uninformed, with reference to the exercise by courts of the undoubted power which they have to punish for contempt.

That the development of administrative law must stop short of combining in one person or group legislative, executive, and judicial power which may be exercised arbitrarily, without preserving to a party claiming to be deprived of his life, liberty, or property, a right of review, appears axiomatic. It seems probable that the matter will be worked out ultimately by way of constitutional amendment, permitting the creation of a court comparable to the French Council of State, in order that highly technical and complex questions involved in administrative

law may be reviewed by a competent tribunal. As long as the Fifth and Fourteenth Amendments stand, guaranteeing to every citizen due process of law in matters relating to personal liberty or property, no substitute for procedure according to the course of the common law can be brought into play that does not amount to due process as it has been defined by the decisions of the United States Supreme Court.

As has been pointed out repeatedly, the development of administrative law in the Anglo-American system is of comparatively recent date. It has met with a hostile reception at the hands of common law lawyers who are schooled in the fundamentals of the doctrine of separation of powers. Those desiring to enlarge the field of administrative law have been in many instances those who sought through such an intermediary to impose their economic ideas upon the state by giving them the force of law through the determination of administrative tribunals. Many legal controversies which are carried on in the language of the law really arise over differences in economic theory, and are more economic than legal in substance. There seems to be a double danger in combining the powers in a single administrative agency: first, the danger from such a combination pointed out by Montesquieu; and second, the danger that such a combination might be made a vantage ground from which a determined minority could impose its economic and managerial theories upon business organizations. That the problems presented are of great magnitude and importance cannot be doubted. One who attempts to prophesy in this field is certainly not lacking in courage, not to say rashness. From past developments, it is safe to say that for the immediate future a right of review of the determination made by administrative tribunals will be preserved.

The second major contact of the administrative and common law systems arises out of the delegation of legislative power to administrative agencies. There has grown up a practice, and within recent years there has been a rapid expansion of it, in the direction of granting administrative agencies general authority in a specific field and authorizing the agency to carry

the legislative mandate into effect and for that purpose to adopt necessary rules and regulations. These rules and regulations, when adopted, have the force and effect of law, and penalties may be imposed by the courts or by administrative agencies for their infraction. There is in the exercise of such powers a natural tendency to run to arbitrary determination, because it is the easiest and simplest way to administer the law. No doubt administrative agencies can be kept within the field of their jurisdiction by the courts, because if they act in excess of their jurisdiction their acts are void. There is bound to be an overlapping, a zone in which it is difficult to say whether the power exercised is legislative in character or whether it is merely in the nature of a rule-making power to carry out a declared legislative policy. Those who are most disquieted by the growth of administrative law need have no fear that citizens who are deprived of their liberty or property by means of the *ultra vires* acts of administrative agencies will be without legal remedy. As a matter of fact, the practice of administrative agencies tends to crystallize into a body of rules, observance of which tends to curb arbitrary power. Abuses are quite promptly and readily corrected by legislative action, and in clear cases *ultra vires* acts will be restrained by the courts. The difficulty is quite likely to be that administrative agencies will become too formalistic, be given too little discretion, and develop a body of rules which will be as inelastic as statute law itself. It is easier to adhere to a rule once made than to make a new one, and in the great mass of work which is piled upon these agencies it is but natural for them to follow the line of least resistance.

Finally, it is quite apparent that the future development of administrative law in the Anglo-American legal system is dependent very largely upon the personnel which wields the power in the beginning. Naturally (but quite unfortunately) the major positions often become political plums and are awarded for strategic political purposes without regard to the previous training or fitness of the incumbent. It should be said that men so selected, who are permitted to remain in office, often grow and develop into skillful administrators whose

CAMPAIGN EXPENDITURES

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I start with an assumption. It is an assumption which can be supported by impressive evidence, and which political experts, familiar with that evidence, will be disposed to admit: campaign expenditures, in many parts of this country, tend to be not only excessive but also corrupt.

This corruption is particularly noxious because it affects the very foundations of the democratic process. Therefore, when once its existence has been recognized, the application of a remedy becomes imperative. Only one question can arise: What is the appropriate remedy?

Twenty years ago Mr. Perry Belmont was prescribing publicity. His pharmacopoeia resembled, in its simplicity, that of the late Sir William Osler, which was confined to nux vomica and hope. According to his belief—and it is shared by many today—the best method of treatment is to tell the patient what is wrong with him and let him cure himself. In a word, if the law requires publicity for the details of campaign contributions and expenditures, an informed public opinion, becoming aware of unhealthy conditions, can be relied upon to correct them.

Experience makes it plain that this prescription contains too much hope and not enough nux vomica. Public interest in campaign expenditures and the abuses connected with them is spasmodic. It can be roused from its chronic torpor only by the shock of some particularly scandalous or dramatic revelation. The shock comes at frequent intervals. In an Ohio county twenty-five per cent of the voters are actually convicted of selling their votes; Governor Sulzer of New York is impeached, Senator Newberry of Michigan brought to trial; a Senate committee scrutinizes rather closely the spending of vast sums by two leading aspirants to the Republican presi-

dential nomination. Then, for the moment, there is loud condemnation, a parade of exasperated virtue, and perhaps also some dim perception of a problem that touches closely a vital spot in popular government. At least, the righteous—or self-righteous—minority reacts in this fashion. The others, after making a few appropriate gestures for the sake of propriety, subside into cynical indifference.

Two years ago the Republican primaries in Pennsylvania and Illinois precipitated one of these periodic public spasms. The scandal, so far as the Reed committee disclosed it, went beyond mere implications from the size of the campaign funds. These funds were enormous, it is true; in Pennsylvania the Vare-Beidleman faction spent \$786,000, the Pepper-Fisher faction \$1,800,000. But the ways in which the money was raised and spent constituted the real offense. Aside from the largesses of Mr. Samuel Insull and Mr. Joseph R. Grundy, there were mysterious cash transactions—gifts of \$25,000 and \$50,000 which the donors, being men in somewhat modest circumstances, seemed unwilling or unable to explain; and the dense fog of disguise and evasion that enveloped these transactions gave them a sinister aspect. Likewise, some of the expenditures, though ostensibly innocent, bore certain familiar marks of gross corruption. Governor Pinchot said of the senatorial nomination in Pennsylvania that it was “partly bought and partly stolen.” If it was stolen, we must suppose that the hired watchers did little to earn their pay. There were many watchers. In Allegheny county, according to testimony before the committee, the Vare and Pepper factions employed some fifty thousand of them at an estimated cost of half a million dollars; and in that county more than one-third of all the votes received by Vare and Pepper were cast by their ten-dollar watchers. It may be significant that Vare, with only ten watchers to a precinct, was outvoted by Pepper, who had twenty-five.

Now the facts had become notorious well in advance of the November election. The people of Illinois and Pennsylvania were sufficiently informed. They had an opportunity to express their resentment and administer a stinging rebuke. They chose

instead, by accepting Mr. Smith and Mr. Vare, to acquiesce in the vicious methods by which the nominations had been procured. They condoned flagrant corruption; and what happened in that case may be taken as fairly typical of the popular attitude. "However depressing the fact may be to those who have faith in 'the fundamental intelligence and right-mindedness of the American people,' " Mr. Frank R. Kent observes,¹ "every machine politician with precinct experience knows that that faith is without foundation, and that in the matter of corruption—except under certain narrow conditions—the people are complacent rather than resentful."

Publicity, then, is not enough. Its inadequacy has been revealed over and over again. This being so, can we find a better prospect in the alternative of legal restraint—of law so framed that it will set up right standards of conduct and provide effective means of enforcing them? This alternative does not imply the abandonment of publicity, which, indeed, the law will do everything to secure. It simply accepts the condition of a rather irresponsible patient, prescribes his diet, and, while hoping that he will have the good sense to obey, gets ready a dose of bitter medicine as an antidote to over-indulgence.

But the principle of statutory restraint upon expenditures does not escape criticism. When applied under the conditions that actually exist, it involves an apparent fallacy. Does not law derive its sanction from the public opinion behind it? How, then, can you justify recourse to legislation in a case where popular apathy has been demonstrated? How can you hope to enforce moral standards that do not already exist in the conscience of the community? Such questions must be answered. As a matter of fact, the answer is not hard to find. These higher moral standards are already accepted, if not by the community as a whole, at least by an influential minority. Corruption does not pass unchallenged; the disclosures of the Reed committee cost Mr. Vare and Mr. Smith hundreds of thousands of votes. Behind the law, using it as a rallying-point and weapon,

¹ *American Mercury*, vol. XIV (1928), p. 130.

a formidable body of opinion will gather at once. Against the law no active hostility, no open and organized resistance will be directed; for it would be difficult to mobilize any widespread enthusiasm or moral fervor in defense of the inalienable right of corrupting and being corrupted, the fundamental liberty of debauching the electorate.

This theoretical argument may not satisfy the critics. There is a concrete situation that must be faced. We must deal, they say, not with the probable effect of corrupt-practice legislation, but with its actual effect; we must take into account the statutes, state and federal, that, growing steadily in volume through the past generation, have tested the value of a legislative remedy. How effective have the statutes been? This is a vital point. It brings the whole problem into focus. The positive reactions that the experiments show, as the results in forty-five states are tabulated, ought to establish definite conclusions. Unfortunately, the results have not been brought together in any serviceable form. Difficulties stand in the way: the investigator—supposing he has had the time and patience to examine the scattered and complex evidence—finds that there has been no uniformity of conditions in the laboratory tests, that various chemical agents have been employed at varying strengths, and that he is baffled in his analysis by encountering so many strange and imponderable factors. Thus, not only is the New York law quite different from the Oregon law, but the political conditions which each law is designed to meet are also quite different; and the success or failure of each law in correcting manifest abuses—a question of fact that is not easy to determine—may depend far less upon the nature of the remedy than upon the means provided for its application.

The scientific data that we require for purposes of generalization are not available. We are floundering in a morass of ignorance or of casual, incomplete, unreliable, and misleading information. Lord Palmerston said that only three men had been able to penetrate the labyrinth of the Schleswig-Holstein question: the Prince Consort, who wrote interminable memoranda about it; a German professor, who had been driven

mad by it; and he himself, who had eventually forgotten all about it. Nobody has penetrated the labyrinth of our corrupt-practice legislation. At least I have not yet come across any mad professor or any interminable memoranda. The approaches to the labyrinth, it is true, have been charted. Professor Pollock in his *Party Campaign Funds*, Professor Sikes in his *State and Federal Corrupt Practice Legislation*, and Miss Rocca in her *Corrupt Practices Legislation*, which the National League of Women Voters has lately published, have done pioneering work of enormous value. But their contribution, however notable it may be, serves to emphasize the need of an inquiry still more detailed, still more systematic in method and extensive in scope.

The existing body of law must be subjected to a careful analysis. I can indicate here only the broad lines of procedure. First, certain principles that have been established, in the course of a preliminary survey, as characteristic of the more complete or more advanced legislation should be formulated as a norm, and then each separate statute classified on the basis of its approximation to that norm or divergence from it. In the meantime, questions may arise respecting the origin of the statute. Why did the statute assume this particular form? Did the legislature act intelligently on the basis of local experience or the experience of a neighboring state where similar conditions prevailed, or was it guided by theoretical assumptions or by some dubious political motive—the desire, say, to placate the people without conferring any material benefits? Considerations like these are important. When, for instance, four or five statutes show a singular family resemblance, we must trace the blood-lines and construct a genealogical table; we must make it plain that the dominant characteristics of Minnesota, Utah, and some other states have been honorably transmitted from Wisconsin, or that here and there some striking feature of the Oregon physiognomy has been reproduced. But when the statutes have been analyzed and classified, when the historical antecedents have been probed, the accomplishment of our task has merely begun. The way is now open to the really difficult part of the undertaking.

It is absolutely essential to find what each statute means in terms of its practical operation. Here, at last, is the labyrinth! No one yet has been intrepid enough to venture along its intricate and tortuous paths; and at this point the inquiry is likely to falter. There are so many aspects to be considered; there is so little evidence of an obvious or tangible sort. We have the court decisions, of course. But what of the hidden yet vital facts that only the seasoned politician knows and that he will not divulge in response to a naive questionnaire? The possible complications are apparent. In the case of any single statute, then, quite an elaborate investigation would be needed; and the burden involved in a comprehensive nation-wide study would seem to make coöperative rather than individual enterprise appropriate. The American Political Science Association can command the resources that are needed for such an undertaking. I should like to see a committee, under its auspices, draw up a detailed plan and select the field workers—preferably men of legal training and political experience whose familiarity with local conditions would equip them to thread their way through limited areas of the labyrinth. Year by year, at our round-table conferences, phases and stages of the investigation could be discussed, with the idea of exposing any defect in method and of ensuring scientific thoroughness in the field work.

The time is ripe for action. In this subject of campaign expenditures there exists just now a certain amount of popular interest that can readily be capitalized. The need of action is demonstrable. It requires no close observation to establish the lack of any reasoned opinion in this country as to either the proper objects of corrupt-practice legislation or the specific means of achieving them. There is no reasoned opinion because there are no settled facts upon which to base it.

In drawing up its plan for a nation-wide investigation the committee—my hypothetical committee—should look beyond American experience. British experience illuminates our own. It would be absurd to ignore the Corrupt and Illegal Practices Prevention Act of 1883, which—building upon earlier statutes, removing their positive defects, supplying their deficiencies—

brought about a marked improvement in British political behavior and directly inspired a good deal of our American legislation. That act can be studied from the standpoint of the court decisions in a number of fairly exhaustive legal treatises; and from the standpoint of party politics in such works as Houston and Valdar's *Modern Electioneering Practice* and Powell's *Practical Notes on the Management of Elections*. This literature will supply, in convenient and compact form, most of the essential information.

When that information has been obtained, when the act has been appraised in the light not only of its purposes and terms but also of its enforcement and effect, what useful inferences can we draw? After all, the act of 1883 was intended to cure specific abuses; it took the form that was appropriate to its peculiar political environment. The American environment reveals more than one striking contrast to the British. Above all, observe the complexity of our electoral processes: national campaigns, state campaigns, and local campaigns proceeding simultaneously; each party putting forward a ticket that may embrace thirty or forty offices; funds being collected and spent by individual candidates and by a whole series of interlocking committees; the national committee transferring funds to this state committee and that county committee, sometimes for uses that would not bear too close inspection—altogether a scene of confusion and chaos defying ordinary means of regulation. In Great Britain, on the other hand, there is only one campaign, one election, one office to be filled. Obviously, the act of 1883 cannot be applied in the United States unless existing political conditions are modified to suit the act or the act modified to suit existing conditions. But the underlying principles of the act are valid; and it can be shown, I think, that where these have been best understood and most completely applied our legislation has achieved its largest measure of success.

I have in mind three main principles: first, limitation upon expenditures; second, concentration of responsibility for expenditures; and, third, reliance upon self-interest in the matter

of enforcement. The first principle is the only one that is at all generally recognized in our legislation. Three-fourths of the states fix a maximum expenditure for candidates. While such a restriction can be justified on many grounds, such as the encouragement given to independent candidates and relatively poor men, the chief argument is that, when resources exceed actual legitimate needs, the surplus is commonly diverted into corrupt channels. But the maximum can be justified only if it is a reasonable one, approximating the legitimate needs of a campaign; and in our statutes a most amazing variation of standards is encountered. The limitation may be in one state drastic and in another lenient to the point of obvious absurdity; or, though reasonable in amount, it may be quite meaningless because of the exceptions that are attached to it. We find ourselves in a region of unutterable disorder; for, while the principle of a maximum has been accepted, its application has been arbitrary and haphazard; and the effect of limitation has been neutralized, except in half a dozen states, by the fact that party committees may spend any amount whatever in behalf of party candidates. Finally, far too little has been done in the way of prohibiting expenditures that are harmful or unnecessary and of defining with precision the purposes for which money may lawfully be spent.

The second principle is concentration of responsibility. How does the act of 1883 establish it? The candidate is required to appoint a plenipotentiary, an agent. "The election agent," said Mr. Justice Field in the Barrow petition of 1886, "is the person who shall be effectively responsible for all the acts done in procuring the election. . . . He is to hire everybody; no man is to be paid money that does not pass through his hands. . . . He is a known and responsible man who can be looked to afterwards for an explanation of his conduct in the management of the election." It is the election agent who makes all arrangements, assumes all obligations, pays all bills, and who, five weeks after the election, submits the required statement of expenditures. No other person, says an act of 1918, may incur any expenses for the purpose of promoting or procuring the

election of a candidate unless authorized in writing by the agent to do so. Thus the Tariff Reform Union or the Anti-vivisection Society may not spend money in behalf of a candidate without securing such authority, and the candidate may not profit from such support without including the money so spent in his election statement. The local party organization is similarly affected. Commentators on the law, it is interesting to observe, advise the organization to dissolve formally for the period of the campaign.

This principle of concentration, which is a vital part of any scheme of restraint upon campaign expenditures, has been almost universally neglected in the United States. It has been neglected partly because of failure to realize its importance and partly because of the difficulty of adjusting it to American conditions. The difficulty is patent. Since we elect at one time a host of national, state, and local officers, and elect them usually as Republicans or Democrats, the county campaign forms part of the state campaign, the state campaign part of the national campaign. In any given district, all the candidates on the Republican ticket are united in a common enterprise. The various Republican committees are spending money in the interest of the whole ticket. If they buy votes, everybody profits. Where is the magic formula that will concentrate responsibility? The problem would be simplified if national elections were separated from state elections—and with a four-year term for representative and an eight-year term for senator the separation might be made complete. The problem would be simplified still more if state elections were separated from local elections and our state governments reconstituted upon the Canadian model, with a responsible executive and a single chamber. Simplification of the election process! The short ballot! Here we have the key to many desirable forms of responsibility besides the one being considered now. But it was not a politician who called responsibility the finest word in the English language. This simplification is a vague and distant prospect, if not a chimera.

Nevertheless, taking things as they are, some little advance can be made. Consider the Wisconsin law. This follows British

precedent in requiring the candidate to have a personal campaign committee, of one or more persons, which shall control his limited campaign fund in the manner of the election agent and which shall generally be presumed to act with his knowledge and approval. But what of the party organ, the state or county committee, which is working and spending money for his election? The funds at the disposal of any committee are contributed solely by the candidates and charged against the maximum expenditure that the law allows them. A single exception is made in the case of the state committee; it may make further disbursements aggregating \$10,000.

Wisconsin has made an advance, but apparently not a sufficient advance. It holds the candidate responsible for the acts of his personal campaign committee, but not for the acts of the party committee, which he has subsidized. Let me turn for a moment to the practice in Great Britain. There the special doctrine of election agency differs from the ordinary legal doctrine of agency. It is designed to reach instances where a candidate seeks to profit by the misconduct of others, while denying that he is responsible for their acts or capable of controlling them. The substance of the doctrine, according to an opinion in the Great Yarmouth case, is that "if a man is employed at the election to get you votes, or if, without being employed, he is authorized to get you votes, or if, though neither authorised nor employed, he does to your knowledge get you votes, and you accept what he has done and adopt it, then he becomes a person for whose acts you are responsible." According to this doctrine, the local organization becomes an agent of the candidate if it supports him in the campaign and if he accepts its support. Why should the candidate in Wisconsin escape a like responsibility? He has made a contribution to the party committee—perhaps amounting to the whole of his maximum allowance for the campaign. His political fortunes depend largely upon the efforts of this committee. It seems to follow that violations of the law should be brought home to him. Without such a rule there can be no effective concentration of responsibility.

The third principle concerns enforcement. It relies upon the

motive of self-interest. Now, according to the principles already examined, a candidate is strictly limited both in the nature and in the amount of his expenditures, and, being responsible for the acts of his agents, becomes involved in corrupt practices that are committed in furtherance of his election. But how is his guilt to be established? The district attorney may be reluctant to prosecute, either because the culprit belongs to his party or because the parties have a vague sort of gentlemen's agreement to ignore the law and proceed according to the familiar, customary rules of the game. He concludes, therefore, that the evidence will not justify his going before the grand jury; or he presents the evidence in such a fashion that the grand jury will not act upon it. His derelictions, disguised as they are, do not greatly agitate a tolerant public. Indeed, a jail sentence may seem cruel and unusual punishment—it certainly is unusual—for misguided generosity in the campaign.

If the law is to be effective, two conditions are necessary. First, the penalty for the successful candidate, when he or his agents have committed wrongful acts, must be removal from office. Then the fear of having his election set aside will restrain a candidate from taking serious risks or allowing his agents to do so; and his opponent will be constantly on the alert to catch him in some violation of the law. Here is the motive of self-interest. Its force and sufficiency will depend upon the second condition. The law must make it easy for any voter—that is the defeated candidate—to attack the validity of the election in the courts. In this matter the Wisconsin corrupt-practice act improved upon the British act of 1883. I cannot enter into the details. The significant feature of the Wisconsin law is this: the petitioner may apply to the county judge or the state attorney-general or the governor—to each in turn if he meets with a rebuff—for leave to bring a special proceeding and for the appointment of special counsel; and no judgment for costs shall be awarded against him unless he is shown to have instituted the proceeding otherwise than in good faith. He is not only reasonably secured against political obstruction; but

also free from the embarrassment of the heavy costs which discourage the bringing of petitions under the British act. From the theoretical standpoint, at least, these arrangements seem entirely adequate. The one man who has a personal incentive to enforce the law is provided with means of action.

I have formulated three principles, three sacraments, as it were, of corrupt-practice legislation. According to my canons of faith, they are generally necessary to salvation. They are at the same time neglected almost everywhere, neglected through ignorance. The situation, therefore, calls for missionary zeal and organized, informed propaganda.

AMERICAN GOVERNMENT AND POLITICS

Campaign Funds in 1928. During the important political year 1928 no fewer than five separate congressional committees were engaged in investigating various phases of the problem of campaign funds. First, the Reed committee, which was appointed by resolution of the 69th Congress to investigate the elections of 1926, was continued in existence so that it could wind up its work.¹ In addition, it was given authority by a new resolution of the 70th Congress to investigate the New Jersey senatorial primary of 1928.² Second, the committee on privileges and elections of the Senate was authorized to hear and determine the Wilson-Vare election contest in Pennsylvania.³ A sub-committee, with Senator Waterman as chairman, was selected on January 27 to perform this task. Third, the Senate created a special committee to investigate pre-convention and election expenditures in the campaign of 1928.⁴ Senator Steiwer was appointed chairman of this committee. Fourth, a special House committee was appointed on the day before the close of the session to look into the campaign expenditures of 1928, with Congressman Lehlbach of New Jersey as chairman.⁵ Finally, the Senate by resolution authorized the committee on post offices and post roads, or any sub-committee thereof, to investigate the alleged sale of Southern postmasterships, and Senator Brookhart was appointed chairman of the sub-committee.⁶

¹ Senate Resolutions 10 and 178 of the 70th Congress continued in full force and effect the following Senate resolutions of the 69th Congress: 195, 227, 258, and 324.

² Senator Caraway offered the resolution (Senate Resolution 232) on May 16 which authorized the Reed committee to look into the New Jersey primary. The members of the Reed committee are: Reed, McNary, Goff, La Follette, and King.

³ Senate Resolution 68. The committee is as follows: Waterman, Steiwer, Moses, Caraway, and Bratton.

⁴ Senate Resolutions 214 and 234. By Senate Resolution 255 this same committee was authorized to investigate war-time sugar transactions. The members of the committee are: Steiwer, Dale, McMaster, Barkley, and Bratton.

⁵ House Resolution 232. Mr. Snell, in offering the resolution, stated that the committee "would not go snooping around the country prying into a person's private affairs." The investigation, he said, was not to be a general one, but was only to be concerned with those cases which the committee felt necessary to treat. The following are members of the committee: Lehlbach, Newton (resigned when he was appointed chairman of the Western speakers bureau of the Republican national committee), Nelson of Maine, Ragon of Arkansas, and Black of New York.

⁶ Senate Resolution 193.

The Reed committee held hearings in April and May in connection with the Wilson-Vare contest in Pennsylvania, and in June in connection with the New Jersey senatorial primary. These investigations did not lead to any particularly valuable disclosures, although they produced some interesting and enlightening information about the Vare machine.⁷ The committee was unable, however, during the year to bring the controversy over the seating of Mr. Vare to a close. On December 9, 1927, at the opening of the 70th Congress, the Senate had passed a resolution denying a seat in that body to Mr. Vare until the Reed committee should have reported, "and until the final action of the Senate thereon." On December 26, 1928, the Reed committee sent a letter to Mr. Vare reviewing the history of the investigation and notifying him to appear before the committee on January 4, 1929. Apparently the committee desires to have the matter concluded before the adjournment of the present session of Congress.

The Waterman committee held hearings in Philadelphia and Pittsburgh and continued its recount of the ballots cast in the Pennsylvania senatorial election of 1926. Although it has reported progress, it has not been able, and will not be able for some time, to submit a final report to the Senate.⁸

The Steiwer committee got to work promptly after its appointment and took four volumes of testimony dealing with the pre-convention campaign.⁹ The committee examined nearly every one who was in any way connected with any candidacy, real or imagined. Included in the list were many United States senators. In fact, the first part of the hearings would lead one to suppose that the Senate is the natural breeding place for presidential nominees. Although the testimony was of little immediate or permanent value, it was worth having, because it brought into the open a number of matters which, without the investigation, would never have been known. To throw the light of publicity upon the obscure work which goes on during the pre-convention period is indeed desirable. Of course there was a good deal of balderdash in much of the testimony, and much of it was carried

⁷ See the Hearings of the committee in these connections.

⁸ No Hearings have as yet been printed.

⁹ Hearings, Special Senate Committee Investigating Presidential Campaign Expenses, Parts 1, 2, 3, and 4. Part 4, pp. 1095-1129, contains a statistical summary of the receipts and expenditures made by or on behalf of the candidates for the Republican and Democratic presidential nominations during the pre-convention period.

on for political effect. But any kind of a check-up or investigation of underlying political forces has its value.

This committee required all political committees to submit to it complete reports of campaign expenditures. The party committees have been most regular in meeting this requirement, and the committee has a complete file of all campaign receipts and expenditures. Following the submission of the final party accounts on January 1, the committee expected to make its recommendations and report to the Senate.

The special House committee under Congressman Lehlbach also required the party committees to submit their campaign accounts. Several hearings were held, but the committee did not exert any influence on the campaign, nor had it, up to the time this article was written, carefully considered the problems involved in the use of money in elections. Its little investigation in Texas could have been conducted by one of the regular House committees on elections, while on the other hand several profitable fields of exploration were open to the committee. But it preferred to let well enough alone. Thus another committee which might have helped along the difficult problem of campaign funds with some constructive suggestions has appeared, sunned itself in the burning heat of publicity, and disappeared without making even so much as a ripple on the surface of political practice.¹⁰

Senator Brookhart's committee, which had allotted to it a very important subject for investigation, namely, the alleged sale of presidential offices in the South, held several hearings which have not been published. Various Southern congressmen appeared before the committee to testify about patronage matters, and the secretary of the Civil Service Commission made certain suggestions for the improvement of political conditions in the South. It will be remembered that the Civil Service Commission has been investigating the sale of offices in the South, and that the Department of Justice has several indictments pending in Mississippi against Republican politicians in that state. To date, the committee has not made any recommendation to the Senate.

One must say, therefore, that although there has been a plethora of committees and an abundance of investigating, the results are not particularly helpful in improving undesirable practices connected with

¹⁰ The committee did announce to the press that it was contemplating further investigations into the political expenditures of several political organizations, but to date these investigations have not occurred.

the use of money in elections. Nevertheless, the public is learning more and more about the unsavory political practices which still flourish in this country, and these investigating committees have been the means by which the public has been further informed. The existing federal law, however, continues to cry for amendment, and little progress is being made. These committees undoubtedly have had certain negative effects. They have provided some check which might not otherwise have been forthcoming, and they stood ready to look into any situation which might have developed. But one cannot avoid some feeling of disappointment that they did not take advantage of their opportunities to point a moral, if not to bring about specific improvements.¹¹

During the first session of the 70th Congress, a number of bills and resolutions were introduced in both the Senate and the House to amend the existing corrupt practices act and to amend the Constitution. The House committee on the judiciary held a hearing on a proposed constitutional amendment introduced by Representative Rathbone,¹² and the Senate judiciary committee reported out favorably Senator McKellar's bill to amend the federal corrupt practices act.¹³ The other bills, with one exception, did not receive any attention;

¹¹ Mention should be made of the Hearings before the Senate committee on public lands under Senate Resolution 101. Part 2 of these Hearings contains a great deal of interesting testimony relating to campaign funds, including Mr. Hays' after-thoughts. Evidence is given showing how party deficits were handled in previous years and how loans were made. A New Jersey legislative investigating committee, under the chairmanship of Senator Clarence E. Case, has been delving into the politics of Hudson county. Some of the inside workings of the Hague machine have been uncovered. At one session of the committee Senator Case, from the available testimony, showed that approximately \$370,000 was raised in Hudson county annually from political assessments.

¹² H. J. Res. 277.

¹³ By reporting out this bill the Senate judiciary committee puts itself on record as favoring the proposal to amend the present corrupt practices act by extending its terms to include primary elections. In the report the committee, through Senator Caraway, argued that it is not necessary to amend the Constitution in order to give Congress jurisdiction over primary elections. The committee indicated that the Newberry decision is no bar to Congressional action to extend the terms of the corrupt practices act to include the nominating process. In 1925, when the present act was passed, the Senate was afraid to regulate nominations. Today its judiciary committee, through a carefully worded bill which makes it perfectly clear that the Senate considers the nomination process as an inseparable part of the election machinery by which members are sent to Congress, has taken an opposite but a better position. See S. 4179 and Senate Report No. 895.

nor did they arouse any discussion.¹⁴ The exception refers to the bills and resolutions introduced by Senator Cutting of New Mexico. This new comer to the Senate introduced five measures intended to bring improvement in the present legal regulation of campaign funds. Two of his measures proposed constitutional amendments; the other three were proposed laws amendatory of the present laws. On May 11, when Senator Cutting brought these measures to the attention of the Senate, there was an interesting discussion of the problem of the regulation of campaign funds. The Senator's proposals, while incomplete and temporary in some respects, represent a commendable attempt to bring this serious matter before the Senate and to press for a solution.¹⁵

Coming now to the financial outlays in the campaign of 1928, we find many features which require considerable attention. In the first place, the year 1928 marks the highest point to which campaign expenditures have ever gone in the history of the country. According to the final accounts filed in pursuance of law by the treasurers of the Republican and Democratic national committees, the following sums were received and expended for the purposes of the presidential campaign:

	<i>Receipts</i>	<i>Disbursements</i>
Democratic National Committee	\$3,844,958.43	\$5,342,349.89
Republican National Committee	3,814,815.45	3,529,178.25

For the second time in recorded history, the Democratic national committee expended more money than the Republican national committee.¹⁶ Furthermore, the Democratic national committee has reported an expenditure larger than that of any national committee

¹⁴ See S. 3914, S. 3971, and S. 3972 introduced by Senator Shipstead; S. 825 by Senator Hawes; and S. Res. 129 by Senator Neely. Also H. R. 6101, 12770, 12905, 12906, 12907.

¹⁵ S. J. R. 149, S. J. R. 150, S. 4422, S. 4423, and S. 4424 are the measures referred to. These contain many excellent provisions, including one providing for the creation of an election commission, and others which would eliminate several of the loopholes in the present law. See *Congressional Record*, vol. 69, pp. 8718-8728 (May 11, 1928).

¹⁶ The other occasion when the Democrats expended more money than the Republicans to elect a president was in 1912. But in that year the Republicans were divided, and the Democratic outlay, although larger than that of the regular Republicans, was not as large as the combined Republican and Progressive funds. The Democratic disbursements in 1912 amounted to the modest sum of \$1,134,848.00. See my *Party Campaign Funds*, p. 27, for a table showing the accounts of the national committees of the two parties since 1912.

in history, the only approach to its achievement being the Republican outlay in 1920.¹⁷ The Democratic national committee succeeded in raising the largest sum of money for a national campaign yet known. The total amount raised by the Republican national committee, both for its own purposes and for the use of the state committees, was the unprecedentedly large sum of \$6,541,748.05, a really remarkable achievement. The expenditures of the national committee were likewise larger than in 1924 by about half a million dollars. The sum raised by the Democratic committee was the largest the party has ever known, and its achievement in this respect should not be lost sight of.

The expenditure of such huge sums of money in political campaigns always causes tongues to wag. But, interestingly enough, this campaign has been the first in recent decades which has not raised the cry of "slush funds." Both parties being adequately financed, there was no reason for either to complain about the other. After all, it is not the size of the fund that is most important. We should have learned by this time that the source of the fund and the manner of expenditure are factors of much greater importance. Nine million dollars does not seem to be an unreasonable amount to expend in a country of this size, with its vast territory, its enormous and heterogeneous population, and on a campaign which lasts four months.¹⁸ Legitimate expenses come high, and although there is always much wastage, those who are in charge of the campaigns cannot afford to take chances. It is easy, after the campaign is over, to editorialize about how unnecessary it was to spend so much money, to say that the result would have been the same regardless of the expenditure of money, and to aver that several million dollars less would have sufficed. But the presidency is a prize which cannot be thrown away, and although we have fortunately passed the time when national elections

¹⁷ A somewhat confusing but entirely justifiable system of collecting money was used by the Republicans. Mr. Nutt, the Republican treasurer, acted as agent not only for the national committee but also for the state committees. Thus, two solicitations of the same persons for two committees were rendered unnecessary. Part of a contribution could be earmarked for the national committee and part for a state committee. The figure given above for the Republican national committee represents only the money received and spent directly for the national committee. To include the funds collected for the state committees would result in making an inaccurate comparison with the Democratic national committee fund.

¹⁸ The writer's opinion in this regard has been strengthened after a year's study abroad observing the use of money in English, French, and German elections.

can be bought, managers must be eternally vigilant to do everything possible to forward the interests of their candidates.

The second important observation to be made regarding the campaign of 1928 and its money outlay concerns the question of sources. How could such huge sums be raised, and where did all this money come from? The answer is quite the same as would be made after any recent presidential campaign. "Them who has, gives." The only trouble is that the rank and file of the parties have never adequately supported the parties financially, and that the bulk of the party funds must come from the richest persons. In this campaign the treasurers continued the commendable practice of former campaigns by attempting to widen the subscription lists so as to include as many contributors as possible, in other words, to democratize party funds. And their efforts were rewarded to a certain extent. There were no fewer than 90,000 contributors to the Democratic fund and 145,000 to the Republican fund. This is the largest number of contributors either party has secured in any campaign. The bulk of the two funds, however, continues to be subscribed by a comparatively small number of large contributors. The parties in the recent campaign did not place a limit on the size of party contributions, the Hays \$1,000 rule of 1920 having apparently been considered unworkable. Consequently, there were many large contributions.¹⁹ As has been the case in recent campaigns, the Democrats received the largest single contributions, although there were not as many large contributors to their chest as to the Republican.

The expenditure of these large sums of money did not prove a difficult task. In recent years political campaigns have become more and more expensive because of the use of advertising media of one sort or another, and in the recent campaign for the first time, because of the use of the radio. In this campaign the Democratic national committee expended nearly \$600,000 for radio facilities. The outlay for newspaper advertising, both nationally and locally, was very large, and the cost of headquarters in the leading centers of the country was greater than ever before. For the first time in many years, the Democratic party was able adequately to finance a thoroughgoing national campaign, its subsidies to the various state committees being

¹⁹ The largest single contributions were made by W. F. Kenny and John J. Raskob, who gave \$100,000 each to the Democratic national committee. There were several other Democratic contributions which were larger than the largest single Republican contribution, which was made by W. H. Crocker in the sum of \$30,000.

very generous.²⁰ Whatever may be said about the allocation of funds to various purposes, it must be admitted that the generous expenditure of money by both national committees had much to do with heightening the interest of the country in the election and in making the campaign of 1928 indeed one of the most interesting in American history.

The problem of party deficits is still with us. The Democrats ended the campaign with a shortage of approximately \$1,500,000. This deficit does not represent outstanding obligations of any kind to merchants who have done business with the committee. It represents loans made to the committee by twenty-five or thirty of Governor Smith's personal friends and political supporters. On the Republican side, there was a large surplus. In 1924 the Republicans, for the first time since 1900, ended with a surplus, and their efforts in 1928 were also rewarded handsomely.²¹ But it is not meant to imply that the problem of party deficits is solely a Democratic one. As recently as 1920 the Republican national committee had a deficit of approximately \$1,200,000, and the experience in wiping out that deficit has demonstrated the dangers of all deficits.

Ever since we have had a reasonably good public accounting of party expenditures in presidential campaigns, both parties have had recurring deficits. In fact, deficits are the rule and not the exception. Until 1924, both parties ended their campaigns with large deficits, and carried these deficits during most of the time between campaigns. Until the amendment to the federal corrupt practices act was enacted in 1925, we had no knowledge of how deficits were handled. Now, party committees must file accounts throughout the years intervening between campaigns, as well as during and immediately after campaigns, and we are thus able to know how deficits are paid off. Prior to this requirement, if it had not been for the investigation into the oil leases conducted by the Senate committee on public lands we should never have known of Mr. Sinclair's part in wiping out the Republican deficit of 1920. Nor should we have had the enlightening information which this investigation gave us about party deficits in general.²²

²⁰ The Democratic national committee donated \$500,000 to carry on the campaign in the Western farm states, and \$125,000 to the Smith Colored League to work among the negroes of northern cities.

²¹ In 1924 the Republican surplus amounted to \$355,000, the largest ever recorded. In 1928 the surplus was \$285,637.20.

²² See Hearings, Senate Committee on Public Lands, pursuant to S. Res. 101, 70th Congress, Parts 2 and 3. (Leases upon Naval Oil Reserves.)

The problem of party deficits is more than a mere business problem. One can scarcely imagine a good business man running himself in debt with so much gusto and carefreeness as our party managers do. But party deficits are more than business deficits. They are in a very real sense public deficits, and if party managers continue to spend more money on their campaigns than they have collected, some definite action must be taken.²³

Several considerations against party deficits immediately come to mind. The spirit of the publicity law is violated if the expenditures of the campaign are partly defrayed from money which comes from sources unknown to the voters when they cast their ballots. Some politicians know how to collect tainted money after they have won the election. Again, party committees must devote too much time in the interval between elections to the paying off of the deficit, time which could be spent more profitably in educating the voters. Furthermore, party officials are relatively much more grateful for contributions made to clean up a big deficit than for contributions made during the campaign. Only the *very* generous can be expected to contribute to a cause which has been unsuccessful, and only the *most* interested to a cause which has been popularly successful but financially unsuccessful. There is room here for party favors of an undesirable sort. Therefore, why should we have party deficits? If a national committee is unable to raise more than three and a half million dollars, why should it be allowed to spend more? Well, it always has been permitted to do so!

In addition to expenditures by the national committees, we find, of course, very large expenditures in several states and localities.²⁴ The New York county Democratic committee filed an account with the board of elections showing an expenditure of \$245,000, the largest in its history. The Pennsylvania state campaign cost the Republicans \$446,000, the Democrats \$170,000.

²³ New Jersey has taken such action. Article xxix, Par. 514, Sec. 24, of the election laws states: "No campaign manager, . . . shall authorize . . . the incurring of any expense . . . unless there are moneys on deposit in the bank selected in accordance with the provisions of this act, to the credit of the account known as the campaign fund. . . ." I have not been able to investigate the operation of this provision.

²⁴ The senatorial and congressional campaign committees were financed largely by their national committees. The Republican senatorial committee received \$116,000 from the national committee, while the congressional committee received \$228,500 from the same source. The Democratic senatorial and congressional committee expenditures were not large.

Nor were the various non-party associations "pikers." The Association against the Prohibition Amendment expended slightly under \$300,000; the Anti-Saloon League about \$61,000; and the Women's Law Enforcement Campaign Committee about \$150,000. The regulation of the expenditures of these non-party groups is quite as important a matter as the regulation of party expenditures. Until we definitely fix responsibility in the matter of political disbursements, and prevent indiscriminate spending of money by every "pro" or "anti" or personal committee that comes along, we cannot expect to eliminate wasteful and unnecessary spending. Locally, this problem is even more important than it is nationally. The creation of an unlimited number of subsidiary committees should not be permitted to cover up the real amount of money raised or expended.

All in all, the year 1928 was an outstanding one from the point of view of party funds. The year records the greatest expenditure of money yet known to American politics. And still the expenditure of these huge sums has not been accompanied by fraud and corruption as was the case in years gone by when much smaller sums were used. More persons contributed to the funds of both parties than ever before, and the accounts, which were carefully kept by two able treasurers, were made public in such a way that the voters could know just how the party war chests were being handled. One party had a large deficit, the other a large surplus, but both parties conducted intensive campaigns, with the result that there was a greatly improved popular participation in the election. Thus the year has registered distinct gains.

There remain, however, many troublesome problems connected with election expenditures. Our laws in many respects continue to be quite innocuous, if not positively bad. Although it is apparent to most political observers that the whole level of politics has been raised in the last twenty-five years, it is clear that our legal regulations have not kept pace with the times. The grossest forms of fraud and corruption are still possible, and political hijackers still have room to work. A vigilant and high-minded electorate should not longer continue to rely upon chance to keep elections pure.

In 1928, as in all political years (and what years are not political?), money has been an important consideration. The results have not been in accordance with the size of the party funds, as skeptics like to point out. That is to say, the largest fund does not always produce the winner, and did not always produce winners in the year 1928.

Money is no more important today than formerly. But its regulation continues to be a matter of urgent public importance. Unless the springs of public policy are undefiled, we cannot escape contamination. Unless unscrupulous schemers are ruled out by an alert public giving support to adequate laws, party funds, instead of being a public good, will become a public menace.

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Expansion of the Publications of the Department of State. In all countries, the publications of the foreign office hold a peculiar position among government documents. Statesmen appear to be more reticent in informing the public on foreign relations than in regard to any other governmental function. This reticence seems to obtain in democracies as well as autocracies. There are exceptions, such as post-war Germany and Soviet Russia, where the new governments entered upon a policy of disclosing almost everything in past diplomacy for the purpose of exposing the incompetency of the Hohenzollern and Romanov régimes. But these exceptions are conspicuously few. It is, of course, too much to expect foreign offices to publish all diplomatic correspondence and official reports. Some of these communications concern private persons whose affairs should not be exhibited to public gaze. Other papers contain tentative proposals and counter-proposals made in the course of negotiations, and should not, in fairness to all governments involved, be published at the time. Finally, much of the correspondence is merely routine. Nevertheless, it will probably be generally conceded that in a democracy the people ought to have opportunity for wide information regarding the conduct of foreign relations.

In the United States the chief official sources of information include: the President's annual message, *Foreign Relations*, the *Treaty Series*, mimeographed press releases, the *Register of the Department of State* and other lists, and occasional documents issued by the Department of State. It has been the practice of the President to devote a large portion of his annual message to Congress to a resumé of international relations for the year. Indeed, this state paper constitutes the only regular official review of the work of the Department of State. Nine of the ten departments represented in the President's cabinet make annual reports which are duly transmitted to Congress, but the Secretary of State makes no published report. In 1896 Secretary

Olney published a report, but no similar public document has ever been issued.¹ While it is true that under the Constitution the President is the national spokesman of the American people in foreign affairs, and that the Secretary of State is his agent, nevertheless in almost the same degree every other member of the cabinet is his agent. The space devoted to foreign affairs in the President's annual message is extremely limited, and it would be helpful to scholars and writers if the Secretary of State, like other department chiefs, would issue an annual report reviewing the administration of his department and explaining in detail the work accomplished for the year.²

From the time of Washington's administration the President's message has been supplemented by certain documents from the Department of State, such as treaties and diplomatic dispatches. Out of this practice of sending Congress accompanying papers grew up the publication of *Foreign Relations of the United States*, first printed among other departmental papers, and after 1861 issued in a yearly volume by itself. *Foreign Relations* continued to appear promptly at the end of each year until in 1906 it began to fall several years behind, and at the opening of the World War this document was entirely suspended. In 1922, publication was resumed; but the last volume as yet issued from the Government Printing Office is for the year 1917. Thus, *Foreign Relations* is now eleven years behind date. In this respect, our Department of State does not compare favorably with the British Foreign Office, for the corresponding English document, known as *British Foreign and State Papers*, is only three years behind date. In the meantime, the Department of State has wisely segregated the war correspondence from the ordinary correspondence and has begun the publication of a *World War Supplement* for the years 1914-18. Two of the proposed eighteen volumes of this supplement have now appeared.

Treaties and agreements are published from time to time in the *United States Treaty Series*, issued in a form similar to the "Slip Laws." These documents are published only after proclamation of each treaty.

¹ This document, entitled "Report of the Secretary of State to the President, December 7, 1896," followed the annual message of President Cleveland as published in *Foreign Relations* (1896), pp. lxiii-xciii. It was also printed as a separate document.

² An able argument for the publication of an annual report by the Secretary of State was made by Professor Manley O. Hudson in the *American Journal of International Law*, July, 1928. pp. 624-629.

The Department does not publish the texts of treaties that have been negotiated but not yet ratified. For instance, the text of the important American-Turkish treaty of August 6, 1923, has been printed as a confidential document by the Senate, and it was made public on March 24, 1926, but its text is not generally available to the public as a government document.³ The proclaimed treaties are published from year to year by the Department of State in the *United States Statutes at Large*. But there does not exist any up-to-date collection of treaties published by the Department. The latest compilation is the admirable *Treaties and Conventions*, with notes by Bancroft Davis, the most recent edition of which appeared as far back as 1889. Ten years later the Senate committee on foreign relations took over publication of the compilation of treaties. Under its supervision, in 1910, two volumes, commonly referred to as Malloy's *Treaties*, were published. In 1923, a third volume appeared. Unhappily, the Malloy edition was prepared without comparing the text of the treaties with the originals in the Department of State, and consequently errors are numerous. An authentic annotated compilation of treaties is one of the urgent needs of jurists and teachers. Recently the committee on foreign relations relinquished to the Department of State its supervision of the compilation of treaties, and thus it appears that a new edition of *Treaties* awaits an adequate appropriation by Congress.⁴

For some years the Department has issued press releases which are accessible to all newspapers and are mailed to a limited number of teachers and publicists. These mimeographed sheets, together with the daily interview granted by the Secretary of State to newspaper correspondents, furnish the chief source of current information as published in the press. The *Register of the Department of State*, issued annually, the *Diplomatic List*, issued monthly, and several other similar lists indicate the personnel of the Department and the Foreign Service, as well as of foreign representatives in the United States. Finally, it should be noted that the occasional documents issued by the Department in recent years have been limited in number. Before

³ Compare *Message of the President of the United States Transmitting a Treaty to Regulate the General Relations between the United States and Turkey, signed at Lausanne, on August 6, 1923*. Confidential. 68th Cong., 1st sess., Executive Z.

⁴ Compare the testimony of Dr. Tyler Dennett in *Hearings before Subcommittee of House Committee on Appropriations in charge of Departments of State, Justice, Commerce, and Labor Appropriation Bill for 1930, Seventieth Congress, Second Session*, p. 59.

the World War the output by the Department was far more extensive. In 1886 there appeared the invaluable compilation known as Wharton's *Digest of International Law*, in three volumes, which was enlarged in 1908 as Moore's *Digest of International Law*, in eight volumes. Numerous volumes of arbitrations were published from time to time, but nothing since 1910. Among the few publications in late years are the *Report of the Commission on Extraterritoriality in China* which appeared in 1926, the *Brief History of the Relations between the United States and Nicaragua, 1909-1928*, and the *General Pact for the Renunciation of War* which appeared in 1928. All of these documents are pamphlets. Recent publications do not include the minutes of international conferences in which the United States has participated, such as the Economic Conference in Geneva in 1927 and the Sixth Pan American Conference at Havana in January-February, 1928. A report of the delegates to the latter conference has been published, but this document does not adequately meet the needs of the student of international affairs who desires the text of all the discussions in at least the plenary sessions if not in the committees.

It is thus apparent that the publications of the Department of State do not meet the needs of teachers of international relations. Since 1924 the post of editor and chief of the division of publications in the Department has been filled by an extremely able scholar, Dr. Tyler Dennett, who possesses the confidence and coöperation of universities, learned societies, jurists, and publicists throughout the country. The funds at his disposal, however, have been far from adequate, and it is to be regretted that teachers and scholars have been dilatory in organizing to present their case to the Department and to secure the necessary appropriations from Congress.

A concerted movement to urge the enlargement of the publications of the Department of State began with resolutions adopted by the Second Conference of Teachers of International Law, held in Washington, D. C., in 1925.⁵ Little was accomplished by this action beyond securing arrangements with the Government Printing Office whereby prompt delivery of the *Treaty Series* might be secured by placing a deposit of ten dollars with the Superintendent of Documents. In the Third Conference, held in 1928, Professor Manley O. Hudson, of the Harvard Law School, in a trenchant paper again raised the question

⁵ *Proceedings of the Second Conference of Teachers of International Law and Related Subjects, Held in Washington, D. C., April 23-25, 1925*, pp. 55-58, 120-121.

of the enlargement of the scope of the publications of the Department of State.⁶ As a result, a committee was appointed to confer with the President of the United States, the Secretary of State, and the appropriate committees of the Senate and House of Representatives. The membership of this committee included Professors Roland S. Morris, University of Pennsylvania; Edwin M. Borchard, Yale Law School; Quincy Wright, University of Chicago; Daniel C. Stanwood, Bowdoin College; and Kenneth Colegrove, Northwestern University.

A few days after the sessions of the Third Conference, the American Society of International Law, at its annual meeting, agreed to coöperate with the Third Conference. The president of the Society, Charles Evans Hughes, an ex-secretary of state, gave warm approval to the project and expressed himself in the following picturesque language: "When I was in the Department I used to wish that I could get on the roof of the State Department with some kind of megaphone which would reach from the Atlantic to the Pacific and tell everything that I had done, and read every telegram and despatch, and leave it to the American people. The trouble is that they do not know, and we need to impart."⁷ A committee consisting of Messrs. William C. Dennis, Henry W. Temple, and Charles Henry Butler was appointed to represent the Society in coöperation with the Teachers' Conference.

The two committees soon called upon President Coolidge, Secretary Kellogg, and other officials in the Department of State, and urged the following proposals: (1) that the press releases be printed, published serially and distributed, and placed on sale by the Superintendent of Documents in the Government Printing Office; (2) that serial publications be issued, in pamphlet form, of diplomatic correspondence, official reports of American delegates to international conferences, and proceedings of and documents connected with such conferences, at frequent intervals, and that there be as liberal a publication of such official documents as is consistent with the public interest; (3) that the publication known as *Foreign Relations* be brought up to date as rapidly as possible; (4) that the cases and coun-

⁶ "The Department of State and the Teaching of International Law and International Relations," *Proceedings of the Third Conference, 1928*, pp. 31-52, 170-177.

⁷ *Proceedings of the American Society of International Law, 1928*, p. 141. An account of the action of the American Society of International Law, as well as of the Third Conference, is given by George A. Finch under the title of "Enlargement of the Publications of the Department of State" in the *American Journal of International Law*, July, 1928, pp. 629-632.

ter-cases and the oral arguments of all arbitrations to which the United States is, or has been, a party since the Fisheries Arbitration, 1910, be published by the Department of State; and that this practice be adopted as to the future; (5) that appointments made under treaties to which the United States is a party be published; (6) that hearings before the House committee on foreign affairs or the Senate committee on foreign relations be published in congressional numbered documents and be placed on sale by the Superintendent of Documents; (7) that a periodical catalogue of government documents relating to our international relations be published by the Department of State; (8) that the treaties, conventions, executive agreements, including postal conventions, protocols or exchanges of notes resulting in agreements, to which the United States has been a party be published by the Department of State in an exhaustive and authentic edition, annotated and indexed as completely as possible; (9) that, in view of the necessary brevity of the report on foreign relations in the President's annual message, the Secretary of State be urged to submit to the President an annual report of the Department of State and of the foreign relations of the United States; and (10) that the personnel of the division of publications of the Department of State be expanded to meet these requests for information on our international relations, and that adequate facilities and appropriations be supplied for this purpose.

It was estimated that the adoption of this publication program would entail an annual expenditure of about three hundred thousand dollars, a portion of which would be recovered by the sale of these documents at the Government Printing Office.

The Department of State took a sympathetic attitude toward the proposals of the committees. It hesitated to accept the entire program of publication, but it expressed its willingness to expedite the publication of the *Foreign Relations*, prepare a new edition of the *Treaties*, and initiate an information service on current diplomatic subjects. For this purpose a supplementary estimate of \$42,420 for personnel was forwarded by the budget officer of the Department. In support of this estimate, the committee from the American Society of International Law made a statement before the Senate committee on appropriations while the Second Deficiency Appropriation Bill was under consideration, but the session was too far advanced to permit the amendment of that bill.⁸

⁸ *Hearings before the Subcommittee of the Committee on Appropriations: United States Senate, Seventieth Congress, First Session, on H. R. 13873, pp. 53-54.*

In the summer of 1928, when the budget for 1930 was under preparation, the State Department prepared an estimate of \$77,000 to inaugurate the new publications program. This included \$33,000 additional personnel for editing the proposed *Information Service*, as well as \$26,000 for printing and binding. Of the last item, \$10,000 was to go for the proposed *Information Service*, and \$16,000 for two volumes of *Foreign Relations*. Under this arrangement, which contemplated further annual appropriations by Congress, *Foreign Relations* would be brought up to date within five years, including about 2,000 pages of ordinary correspondence for each year since the Peace Conference, and an undetermined number of volumes of the *War Supplement*. It was estimated that twenty-seven volumes of a thousand pages each would bring the series up to the year 1927. The *Treaties* would probably be issued within a few years, while the proposed *Information Service* would commence immediately or at the beginning of the fiscal year, namely, July 1, 1929. The later publication was expected to include selections from diplomatic correspondence, questions of international law and diplomatic interest, economic reports, information on the status of treaties, and summarized reports of international conferences.

On October 4, General Herbert M. Lord, director of the Bureau of the Budget, granted a hearing to the committees of the teachers and the lawyers regarding the estimates of the Department of State. This hearing was admirably planned and conducted by Dr. William C. Dennis, who secured oral arguments not only from many members of the committees but also from three former officers of the Department, namely, James Brown Scott, Lester H. Woolsey, and George A. Finch. Two ex-secretaries of state—Robert Lansing and Charles E. Hughes—sent written statements which were entered in the record. The hearing was successful in saving the major portion of the estimates from the rigid application of "Coolidge economy." The Director of the Budget allowed \$50,000 of the Department's estimate. Of this amount, \$40,000 was for the entire personnel of editing, and \$10,000 for printing and binding the publications to be issued in the proposed *Information Service*.

Accordingly, the budget for 1930⁹ which President Coolidge laid before Congress on December 5, 1928, included an estimate of \$50,000 to be devoted to the new publication program of the Department of

⁹ *Message of the President of the United States Transmitting the Budget for the Service of the Fiscal Year Ending June 30, 1930*, p. a131.

State. In the meantime there had begun the hearings before the subcommittee of the appropriations committee of the House of Representatives on the Appropriation Bill for the Departments of State, Justice, Commerce, and Labor. On November 20, Secretary Frank B. Kellogg and Assistant Secretary Wilbur J. Carr, the budget officer of the Department of State, appeared before the subcommittee, and in the course of their explanation of the Department's estimates they made emphatic recommendation for carrying out a part of the publication program urged by the teachers and jurists.¹⁰ These remarks were supported in a detailed statement by Dr. Dennett.¹¹ On the following day, Dr. Dennis, representing the committee of lawyers, and Professor Charles E. Hill, of George Washington University, representing the teachers, appeared before the subcommittee, made statements, and offered documents showing the demand for more information on foreign relations.¹² As a result, the estimate of \$50,000 was included in the Appropriation Bill for the Departments of State, Justice, Commerce, and Labor which was reported to the House of Representatives by the committee on appropriations, and which was passed by the House without opposition on December 20.¹³ The bill is now (January) pending in the Senate.

If the bill passes the Senate and is signed by the President, an important step will be accomplished in the campaign to enlarge the publications of the State Department. Compared with other departments, our foreign office receives most modest appropriations. In 1928, Congress appropriated \$475,000 for printing and binding in the Department of War, \$520,000 for the Navy, \$742,000 for Agriculture, and \$1,855,000 for Commerce.¹⁴ In the same year, Congress gave the State Department only \$200,000. With the increasing interest in international relations, it would seem that the State Department is entitled to a larger share in the educational expenditures of the national government.

The efforts of the committees of the Third Conference and the American Society of International Law have received recent support

¹⁰ *Hearings before Subcommittee of House Committee on Appropriations in charge of Departments of State, Justice, Commerce, and Labor Appropriation Bill for 1930, Seventieth Congress, Second Session*, pp. 5-12, 58, 66-68.

¹¹ *Hearings before Subcommittee*, pp. 58-68.

¹² *Ibid.*, pp. 201-221.

¹³ *Congressional Record*, December 20, 1928, pp. 965-984.

¹⁴ *U. S. Statutes at Large, 1927-1928*, pt. i, pp. 64, 84, 327, 541, 643.

by resolutions adopted at Chicago on December 28, 1928, at the annual meeting of the American Political Science Association, as follows:

Resolved: That the American Political Science Association express its approval of the extension of the publications of the Department of State, and authorize the appointment of a committee of five to cooperate with the committees of the Third Conference of Teachers of International Law and of the American Society of International Law in conferring with the President of the United States, the Secretary of State, and the appropriation committees of the House of Representatives and the Senate.

Resolved: That the American Political Science Association commend to the attention of the President of the United States, the Secretary of State, the Director of the Budget, the Personnel Classification Board, and Congress the question of giving such classification to the editorial staff of the Department of State as will facilitate the cooperation of scholars and learned societies.

The second paragraph of the resolutions was included for the purpose of securing the support of the teaching profession in urging the State Department and the Personnel Classification Board to give such rank and salary to the editorial staff of the Department as will insure that the new publications will be edited by scholars of recognized ability. The committee appointed to represent the Political Science Association consists of Professors Jesse S. Reeves, of the University of Michigan; Frederic A. Ogg, of the University of Wisconsin; Joseph P. Chamberlain, of Columbia University; Benjamin F. Shambaugh, of the State University of Iowa; and Blaine F. Moore, of the American University. On December 30, the Association of American Law Schools, meeting in Chicago, adopted resolutions, somewhat similar in content and appointed a committee including Dean John H. Wigmore, of Northwestern University, and Professors William J. Price, of Georgetown University, and Hector J. Spaulding, of George Washington University. Supported by these additional organizations, the State Department, it is hoped, will be encouraged to expand its new program of publication and ask for larger appropriations from Congress.

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CONSTITUTIONAL LAW IN 1927-1928*

THE CONSTITUTIONAL DECISIONS OF THE SUPREME COURT
OF THE UNITED STATES IN THE OCTOBER TERM, 1927

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A. QUESTIONS OF NATIONAL POWER

I. NATIONAL TAXATION

A protective tariff is constitutional. While most of us—Democratic party platforms to the contrary notwithstanding—had suspected that this was true, the Supreme Court, curiously enough, never passed on the question until its decision in *Hampton v. United States*.¹ In that case the plaintiffs attacked the validity of the Tariff Act of 1922² on two grounds. In the first place, the so-called flexible tariff provision embodied in Section 315 was alleged to authorize an unconstitutional delegation of legislative power to the President. That section provides, in substance, that when the President, upon investigation, finds that differences in the cost of production here and abroad of articles produced in this country are not equalized by the tariff duties fixed by the act, he shall thereupon fix such new rates as will equalize these differences. The Court had no difficulty in rejecting this contention under the authority of *Field v. Clark*,³ in which the reciprocity sections of the Tariff Act of 1890⁴ were sustained. Chief Justice Taft, speaking for a unanimous Court, reviews the general theory of the separation of powers and the doctrine that legislative power may not be delegated. He emphasizes, however, that each department may properly call upon the others for assistance "so far as the action invoked shall not be an assumption of the constitutional field of action of another branch." The scope and character of this assistance, furthermore, "must be fixed according to common sense and the inherent necessities of the governmental coördination." In the "flexible" tariff provision the general principle of the legislation is clearly

* For notice concerning sale of reprints of this article, see advertising pages.

¹ 276 U. S. 394.

² Act of Sept. 21, 1922, 42 Stat. at L. 858.

³ 143 U. S. 649.

⁴ Act of Oct. 1, 1890, 26 Stat. at L. 567.

stated, and the function performed by the President is merely that of filling in the details and applying the principle to concrete situations.

The second attack on the law states broadly that Congress may constitutionally lay duties only for the purpose of revenue, and that an act levying such duties for the purpose of protecting American industries is therefore void. This question, over which men have wrangled for one hundred and forty years, is settled by the Court by two lines of reasoning. First, contemporaneous legislative construction, embodied in the Revenue Act of 1789⁵ and long acquiesced in, fixes the construction to be given to the Constitution. That Congress from the very beginning has deemed it legitimate to lay tariffs for protection is a matter of history. Secondly, the title of the Tariff Act of 1922 reads, "An Act to Provide Revenue, to Regulate Commerce with Foreign Countries, to Encourage the Industries of the United States, and for Other Purposes." "So long as the motive of Congress and the effect of its legislative action are to secure revenue for the benefit of the general government, the existence of other motives in the selection of the subjects of taxes cannot invalidate congressional action." In other words, so long as the act may so obviously be sustained as a revenue measure, its other purposes and objects become irrelevant. The Court might have added that Congress may properly use one of its delegated powers as a means of exercising another, and that a protective tariff may be looked upon as use of the taxing power to facilitate the regulation of commerce, just as the tax on state bank notes was sustained in *Veazie Bank v. Fenno*⁶ as a means of exercising the delegated federal power over the national currency.

In *Nigro v. United States*⁷ the Court again reviews and sustains the validity of the Harrison Anti-narcotic Act.⁸ The circumstances of this review are interesting. In *United States v. Daugherty*,⁹ decided in 1926, Mr. Justice McReynolds, after disposing of the case, which involved no constitutional point, observed quite gratuitously, "The constitutionality of the Anti-narcotic Act, touching which this Court so sharply divided in *United States v. Doremus*,¹⁰ was not raised

⁵ Act of July 4, 1789, 1 Stat. at L. 24.

⁶ 8 Wall. 533.

⁷ 276 U. S. 332.

⁸ Act of Dec. 17, 1914, 38 Stat. at L. 785.

⁹ 269 U. S. 360.

¹⁰ 249 U. S. 86.

below and has not been again considered. The doctrine approved in *Hammer v. Dagenhart*,¹¹ *Child Labor Tax Case (Bailey v. Drexel Furniture Co.)*,¹² *Hill v. Wallace*,¹³ and *Linder v. United States*,¹⁴ may necessitate a review of that question if hereafter properly presented." Mr. Justice McReynolds was one of the four dissenting justices in the *Doremus* case (and the only one now on the Court); he sided with the Court in the two child labor cases and *Hill v. Wallace*; and he wrote the opinion in the *Linder* case. In *Allston v. United States*¹⁵ an attempt was made to present the question of the validity of the act, but since the indictment in that case charged only a violation of the section imposing a stamp tax on certain narcotics and forbidding their sale in unstamped packages, the Court declined to go farther than to hold that section valid, a point on which there could be no doubt.

In the present case, however, the circuit court of appeals, apparently acting on Mr. Justice McReynolds' suggestion quoted above, certified to the Supreme Court certain general questions as to the construction and validity of the Harrison Act. The first question was whether Section 2 of the act, which forbids "any person" to sell drugs except upon a written order from the buyer on a blank issued by the Commissioner of Internal Revenue, includes all persons or applies merely to the persons who are required to register and pay the tax under the first section of the act, i.e., manufacturers, dealers, physicians, etc. The Court rejected the latter narrow construction and applied the act broadly to all persons who might sell the drug. The second question was as to the validity of the act if so construed, and the Court replied that it was valid. All the detailed and incidental formality and red tape set up in the statute are reasonably designed to make it difficult to sell narcotics without paying the tax. They "tend to keep the traffic above board and subject to inspection by those authorized to collect the revenue."

Referring to the close decision in the *Doremus* case, and to the decision invalidating the child labor tax, the Court points out that by an amendment enacted in 1919¹⁶ the taxes levied on the sale of

¹¹ 247 U. S. 251.

¹² 259 U. S. 20.

¹³ 259 U. S. 44.

¹⁴ 268 U. S. 5. See comment in this *Review*, vol. 20, p. 84.

¹⁵ 274 U. S. 289.

¹⁶ Feb. 24, 1919, 40 Stat. at L. 1057.

narcotics were substantially increased, in lieu of the rather nominal levy in effect when the *Doremus* case was decided. The act now brings in revenue of about a million dollars a year. The Court observes, therefore, "If there was doubt as to the character of this act as an alleged subterfuge, it has been removed by the change whereby what was a nominal tax before was made a substantial one." It is believed that this is the first instance in which the Court has made the actual effectiveness of a tax in producing revenue a test of its validity. It would have been impossible to do so in the child labor tax case, since the enforcement of the act was enjoined before the measure was actually put into effect. In the *McCray* case¹⁷ the Court contented itself with observing that the challenged levy "on its face" appeared to be a legitimate revenue measure. It seems doubtful whether the Court could safely make the actual raising of substantial revenue a controlling test of the validity of a tax, but clearly it is an evidential fact of importance and relevance. Mr. Justice McReynolds dissented in this case, on the ground that the restrictions imposed on sales of narcotics have no just relation to the collection of revenue.

In *Blodgett v. Holden*¹⁸ the Court divided four to four on the question whether Congress can validly levy a retroactive gift tax. The Revenue Act of 1924¹⁹ imposed such a tax upon gifts made during the calendar year 1924, although the statute was not actually passed until June 24. Blodgett had made gifts amounting to more than \$850,000 in January, before the gift tax provision in the Revenue Act had even been introduced in Congress. Justices McReynolds, Taft, Van Devanter, and Butler were of the opinion that the tax was "so arbitrary and capricious that its enforcement would amount to deprivation of property without due process of law." Mr. Justice McReynolds said: "It seems wholly unreasonable that one who, in entire good faith and without the slightest premonition of such consequence, made absolute disposition of his property by gifts should thereafter be required to pay a charge for so doing." Justices Holmes, Brandeis, Sanford, and Stone took the position that the act should be construed as applicable only to gifts made after its passage, and that the constitutional question need not be considered. In *Untermeyer v. Anderson*,²⁰ the same provision was involved, with the difference

¹⁷ 195 U. S. 27.

¹⁸ 275 U. S. 142, and 276 U. S. 594.

¹⁹ Act of June 2, 1924, 43 Stat. at L. 313.

²⁰ 276 U. S. 440.

that Untermyer's gift was made while the gift tax bill was in conference committee and its passage reasonably assured. A majority here held the retroactive application void. Four dissenting justices, speaking through Justices Holmes and Brandeis, said again that the act should not be construed retroactively, and also urged that even if it were so construed it ought to be upheld.

II. JUDICIAL POWER

In *Willing v. Chicago Auditorium Association*²¹ another unsuccessful attempt was made to establish the jurisdiction of a federal district court to render a declaratory judgment in a case involving diversity of citizenship. (See the earlier case of *Liberty Warehouse Co. v. Grannis*²² decided at the 1926 term). The case presented the question of the right of the defendants under the terms of their lease to tear down a building on the leased premises and build another. After holding that the facts did not present a proper case for intervention by a court of equity, Mr. Justice McReynolds, by way of dictum, said: "What the plaintiff seeks is simply a declaratory judgment. To grant that relief is beyond the power conferred upon the federal judiciary. . . . The proceeding is not a case or controversy within the meaning of Article 3 of the Constitution." Mr. Justice Stone, in a separate opinion, agreed with the result, but added: "But it is unnecessary, and I am therefore not prepared, to go further and say anything in support of the view that Congress may not constitutionally confer on the federal courts jurisdiction to render declaratory judgments in cases where that form of judgment would be an appropriate remedy, or that this Court is without constitutional power to review such judgments of state courts when they involve a federal question." He added that there was no case or controversy before the Court requiring an opinion as to the validity of declaratory judgments, and that the "determination now made seems to be very similar itself to a declaratory judgment to the effect that we could not constitutionally be authorized to give such judgments."

III. FEDERAL BILL OF RIGHTS

1. *Search and Seizure*

The enforcement of national prohibition continues to give rise to important and novel questions affecting the civil rights of individuals

²¹ 277 U. S. 274.

²² 273 U. S. 70. See comment in this *Review*, vol. 22, p. 85.

stated, and the function performed by the President is merely that of filling in the details and applying the principle to concrete situations.

The second attack on the law states broadly that Congress may constitutionally lay duties only for the purpose of revenue, and that an act levying such duties for the purpose of protecting American industries is therefore void. This question, over which men have wrangled for one hundred and forty years, is settled by the Court by two lines of reasoning. First, contemporaneous legislative construction, embodied in the Revenue Act of 1789⁵ and long acquiesced in, fixes the construction to be given to the Constitution. That Congress from the very beginning has deemed it legitimate to lay tariffs for protection is a matter of history. Secondly, the title of the Tariff Act of 1922 reads, "An Act to Provide Revenue, to Regulate Commerce with Foreign Countries, to Encourage the Industries of the United States, and for Other Purposes." "So long as the motive of Congress and the effect of its legislative action are to secure revenue for the benefit of the general government, the existence of other motives in the selection of the subjects of taxes cannot invalidate congressional action." In other words, so long as the act may so obviously be sustained as a revenue measure, its other purposes and objects become irrelevant. The Court might have added that Congress may properly use one of its delegated powers as a means of exercising another, and that a protective tariff may be looked upon as use of the taxing power to facilitate the regulation of commerce, just as the tax on state bank notes was sustained in *Veazie Bank v. Fenno*⁶ as a means of exercising the delegated federal power over the national currency.

In *Nigro v. United States*⁷ the Court again reviews and sustains the validity of the Harrison Anti-narcotic Act.⁸ The circumstances of this review are interesting. In *United States v. Daugherty*,⁹ decided in 1926, Mr. Justice McReynolds, after disposing of the case, which involved no constitutional point, observed quite gratuitously, "The constitutionality of the Anti-narcotic Act, touching which this Court so sharply divided in *United States v. Doremus*,¹⁰ was not raised

⁵ Act of July 4, 1789, 1 Stat. at L. 24.

⁶ 8 Wall. 533.

⁷ 276 U. S. 332.

⁸ Act of Dec. 17, 1914, 38 Stat. at L. 785.

⁹ 269 U. S. 360.

¹⁰ 249 U. S. 86.

below and has not been again considered. The doctrine approved in *Hammer v. Dagenhart*,¹¹ *Child Labor Tax Case* (*Bailey v. Drexel Furniture Co.*),¹² *Hill v. Wallace*,¹³ and *Linder v. United States*,¹⁴ may necessitate a review of that question if hereafter properly presented." Mr. Justice McReynolds was one of the four dissenting justices in the *Doremus* case (and the only one now on the Court); he sided with the Court in the two child labor cases and *Hill v. Wallace*; and he wrote the opinion in the *Linder* case. In *Allston v. United States*¹⁵ an attempt was made to present the question of the validity of the act, but since the indictment in that case charged only a violation of the section imposing a stamp tax on certain narcotics and forbidding their sale in unstamped packages, the Court declined to go farther than to hold that section valid, a point on which there could be no doubt.

In the present case, however, the circuit court of appeals, apparently acting on Mr. Justice McReynolds' suggestion quoted above, certified to the Supreme Court certain general questions as to the construction and validity of the Harrison Act. The first question was whether Section 2 of the act, which forbids "any person" to sell drugs except upon a written order from the buyer on a blank issued by the Commissioner of Internal Revenue, includes all persons or applies merely to the persons who are required to register and pay the tax under the first section of the act, i.e., manufacturers, dealers, physicians, etc. The Court rejected the latter narrow construction and applied the act broadly to all persons who might sell the drug. The second question was as to the validity of the act if so construed, and the Court replied that it was valid. All the detailed and incidental formality and red tape set up in the statute are reasonably designed to make it difficult to sell narcotics without paying the tax. They "tend to keep the traffic above board and subject to inspection by those authorized to collect the revenue."

Referring to the close decision in the *Doremus* case, and to the decision invalidating the child labor tax, the Court points out that by an amendment enacted in 1919¹⁶ the taxes levied on the sale of

¹¹ 247 U. S. 251.

¹² 259 U. S. 20.

¹³ 259 U. S. 44.

¹⁴ 268 U. S. 5. See comment in this *Review*, vol. 20, p. 84.

¹⁵ 274 U. S. 289.

¹⁶ Feb. 24, 1919, 40 Stat. at L. 1057.

narcotics were substantially increased, in lieu of the rather nominal levy in effect when the Doremus case was decided. The act now brings in revenue of about a million dollars a year. The Court observes, therefore, "If there was doubt as to the character of this act as an alleged subterfuge, it has been removed by the change whereby what was a nominal tax before was made a substantial one." It is believed that this is the first instance in which the Court has made the actual effectiveness of a tax in producing revenue a test of its validity. It would have been impossible to do so in the child labor tax case, since the enforcement of the act was enjoined before the measure was actually put into effect. In the McCray case¹⁷ the Court contented itself with observing that the challenged levy "on its face" appeared to be a legitimate revenue measure. It seems doubtful whether the Court could safely make the actual raising of substantial revenue a controlling test of the validity of a tax, but clearly it is an evidential fact of importance and relevance. Mr. Justice McReynolds dissented in this case, on the ground that the restrictions imposed on sales of narcotics have no just relation to the collection of revenue.

In *Blodgett v. Holden*¹⁸ the Court divided four to four on the question whether Congress can validly levy a retroactive gift tax. The Revenue Act of 1924¹⁹ imposed such a tax upon gifts made during the calendar year 1924, although the statute was not actually passed until June 24. *Blodgett* had made gifts amounting to more than \$850,000 in January, before the gift tax provision in the Revenue Act had even been introduced in Congress. Justices McReynolds, Taft, Van Devanter, and Butler were of the opinion that the tax was "so arbitrary and capricious that its enforcement would amount to deprivation of property without due process of law." Mr. Justice McReynolds said: "It seems wholly unreasonable that one who, in entire good faith and without the slightest premonition of such consequence, made absolute disposition of his property by gifts should thereafter be required to pay a charge for so doing." Justices Holmes, Brandeis, Sanford, and Stone took the position that the act should be construed as applicable only to gifts made after its passage, and that the constitutional question need not be considered. In *Untermeyer v. Anderson*,²⁰ the same provision was involved, with the difference

¹⁷ 195 U. S. 27.

¹⁸ 275 U. S. 142, and 276 U. S. 594.

¹⁹ Act of June 2, 1924, 43 Stat. at L. 313.

²⁰ 276 U. S. 440.

that Undermyer's gift was made while the gift tax bill was in conference committee and its passage reasonably assured. A majority here held the retroactive application void. Four dissenting justices, speaking through Justices Holmes and Brandeis, said again that the act should not be construed retroactively, and also urged that even if it were so construed it ought to be upheld.

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²¹ 277 U. S. 274.

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whose illicit business brings them into contact with federal agents. In *Olmstead v. United States*²³ the Court faced the problem: Does the tapping of telephone wires by prohibition agents, itself a misdemeanor under state law, constitute an unreasonable search and seizure under the Fourth Amendment, so that the use of evidence so obtained would amount to compulsory self-incrimination forbidden by the Fifth Amendment? The evidence in the case showed a colossal conspiracy of rum-runners and bootleggers involving numerous employees, two seagoing vessels and several coast wise craft, underground storage *cachés*, and elaborate offices. The yearly income amounted to over two million dollars. Federal prohibition officers had the telephone wires of the conspirators tapped in the basement of the building in which the offices of the accused were located. Over a period of some five months a record was kept of the telephone conversations of the defendants, comprising 775 typewritten pages. There was no other evidence against the conspirators; but that which was so obtained conclusively demonstrated their guilt. They objected to its use against them on the constitutional grounds stated above.

By a five-to-four vote, the Court held that the wire-tapping and the use of the evidence secured thereby did not violate any constitutional rights of the defendants. Chief Justice Taft spoke for the majority. He reviewed briefly the previous decisions of the Court dealing with search and seizure and the inadmissibility of evidence obtained by it. In the light of these decisions and a fair construction of the Fourth Amendment, is wire-tapping an unreasonable search and seizure? The answer is "no." "There was no searching. There was no seizure. The evidence was secured by the sense of hearing, and that only. There was no entry of the houses or offices of the defendants." The Court refuses to extend the meaning of the Fourth Amendment "to include telephone wires reaching to the whole world from the defendant's house or office." The protection accorded sealed letters in the mails creates no precedent for that here claimed. A letter is a paper, an effect, and is, furthermore, in the custody of the federal government, which forbids its being carried by any one else. No such protection has been accorded to telegraph or telephone messages. Since the wire-tapping does not amount to unreasonable search and seizure, the fact that the evidence was obtained by a method which was both unethical and an offense against state law does not render it inadmissible unless Congress by express legislation

²³ 277 U. S. 438.

chooses to make it so. At common law, evidence is not inadmissible because illegally obtained. The courts have no discretion, without congressional sanction, to exclude evidence because unethically secured. "A standard which would forbid the reception of evidence if obtained by other than nice ethical conduct by government officials would make society suffer and give criminals greater immunity than has been known heretofore."

Justices Holmes, Brandeis, Butler, and Stone dissented. In his brief and pithy opinion, Mr. Justice Holmes confines himself to the point that the government cannot decently use evidence obtained by the crimes of its agents. There are no clear precedents to cover the case, and the Court must, therefore, "consider the objects of desire, both of which we cannot have, and make up our minds which to choose. It is desirable that criminals should be detected, and to that end that all available evidence should be used. It is also desirable that the government should not itself foster and pay for other crimes, when they are the means by which the evidence is obtained. . . . We have to choose, and for my part I think it a less evil that some criminals should escape than that the government should play an ignoble part." He adds: "If the existing code does not permit district attorneys to have a hand in such dirty business, it does not permit the judge to allow such iniquities to succeed." The fact that wire-tapping is an offense against the state and not the federal government is immaterial. "I hardly think that the United States would appear to greater advantage when paying for an odious crime against state law than when inciting to the disregard of its own." Mr. Justice Brandeis elaborates this point of view still further. "Our government," he says, "is the potent, the omnipresent, teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a law-breaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means—to declare that the government may commit crimes in order to secure the conviction of a private criminal—would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face." In addition, he takes issue with the majority on the quest on whether the Fourth Amendment was violated. That amendment should be liberally construed to afford protection commensurate with the invasions of privacy made possible by the advance

²⁴ Ex parte Jackson, 96 U. S. 727.

of science and invention. There was actually an unreasonable search in this case. Mr. Justice Butler, in a separate opinion, dissents on this latter ground. The tapping of the wires and the listening in by the officers constituted, in his judgment, a search for evidence in violation of the Fourth Amendment.

In *Gambino v. United States*²⁵ New York State troopers arrested the defendants, searched the car in which they were, and found liquor which they turned over to the federal authorities, who used it as evidence to secure the defendants' conviction. No warrant was used by the troopers, and the evidence showed the search to have been made without probable cause. Was the evidence admissible against the defendants in a federal court? The Court held not. This is upon the ground that the state troopers, although not agents of the federal government, believed that they were required to aid in the enforcement of the Volstead Act; and the aid thus extended was utilized by the federal authorities. The subsequent federal prosecution was in fact a "ratification of the arrest, search, and seizure made by the troopers on behalf of the United States." The Court distinguishes this from the case of *Burdeau v. McDowell*²⁶ and other cases where evidence illegally secured by persons other than federal officers was held admissible, on the ground that in none of these cases was the illegal search and seizure made "solely for the purpose of aiding the United States in the enforcement of its laws." Since the conviction rested wholly upon evidence secured by the invasion of the defendant's constitutional rights, it must be set aside. The Court referred to the memorandum by Governor Smith issued upon his approval of the repeal of the New York enforcement act in 1924 in which he declared that all peace officers, thus including state troopers, are required to aid in the enforcement of the federal law "with as much force and vigor as they would enforce any state law or local ordinance," and that the repeal of the Mullen-Gage [Enforcement] Act would make no difference in their actions except that offenders must now be taken before a federal court for prosecution.²⁷ This statement received wide publicity and has caused much controversy. The Court observes merely that

²⁵ 275 U. S. 310.

²⁶ 256 U. S. 465.

²⁷ Memorandum filed with Assembly Bill, Introductory No. 1614, printed No. 1817, p. 2. See also Messages of Jan. 2, 1924, N. Y. Legis. Doc. 147th Sess. 1924, No. 3, p. 40, and Jan. 7, 1925, N. Y. Legis. Doc. 148th Sess. 1925, No. 3, pp. 39, 40; Report of the Dept. of State Police for 1924, N. Y. Legis. Doc. 148th Sess. 1925, No. 50, p. 13.

"whether the laws of the state actually imposed upon the troopers the duty of aiding the federal officials in the enforcement of the National Prohibition Act, we have no occasion to inquire." It seems clear from the present case, however, that if state peace officers are to be of real service to the federal government in supplying it with illegally obtained evidence, they must conceal their amiably helpful intentions and appear to be acting wholly on their own responsibility.

In *Marron v. United States*²⁸ federal agents entered under a search warrant authorizing the search of the premises and seizure of liquor and articles for its manufacture. They found the sale of liquor actively going on, arrested a person apparently in charge and conducting the business, and in the course of their search seized a ledger and various other incriminating documents in a closet. These were used as evidence against the accused, over his protest. The Court finds that the seizure of the ledger and bills is not authorized by the warrant, which under the Fourth Amendment must specify the things to be seized. However, when the arrest was made a crime was actually being committed, and as an incident to that arrest the officers could properly search the place to find things used in aid of the criminal enterprise. The ledger and documents were used indirectly, at least, as part of the general equipment of the saloon and the unlawful business carried on there. The search and seizure were therefore justified, and the evidence obtained was admissible.

In 1917 Congress passed a law²⁹ prohibiting the manufacture, sale, and *possession* of intoxicating liquor in Alaska, and allowing search warrants to issue for the entry of private dwellings upon probable cause to discover violations of the law. The Volstead Act³⁰ limits the use of search warrants and forbids their use against private dwellings unless liquor is being sold, or unless the building is also used as a store, shop, saloon, etc. It also plainly declares that the possession of liquor in one's home is lawful. In *United States v. Berkeness*³¹ the Court holds that the Volstead Act overrides the conflicting provisions of the act of 1917 and is applicable to Alaska. Consequently, evidence obtained by searching a private dwelling under a warrant not alleging the sale of liquor is inadmissible.

²⁸ 275 U. S. 192.

²⁹ Act of Feb. 14, 1917, 39 Stat. at L. 903.

³⁰ Act of Oct. 28, 1919, 41 Stat. at L. 307.

³¹ 275 U. S. 149.

2. *Due Process of Law*

In *Casey v. United States*³² an attack was made on the section of the Anti-narcotic Act³³ which provides that the absence of the required stamp from any of the drugs "shall be prima facie evidence of a violation of this section by the person in whose possession the same may be found." The creation of this presumption, it was alleged, amounts to a denial of due process. The provision was held valid by the Court, with four justices dissenting. Mr. Justice Holmes, speaking for the majority, said there is no want of due process in throwing upon accused persons "the burden of proving facts peculiarly within their knowledge and hidden from discovery by the government." In the case of poison which is not commonly used "except upon a doctor's prescription easily proved, or for a debauch only possible by a breach of the law, it seems reasonable to call on a person possessing it in a form that warrants suspicion to show that he obtained it in a mode permitted by the law." He reiterates what is said in the *Nigro* case³⁴ as to the general validity of the act and says that it is too late to overthrow it on the strength of the child labor tax case.³⁵ Mr. Justice Brandeis dissents on the ground that in this case the government instigated the crime of which the accused was convicted. Justices McReynolds and Butler both emphasize their belief that there is no rational connection between the fact proved, i.e., the possession of unstamped drugs, and the ultimate fact presumed, i.e., the unlawful acquisition of them.

IV. TERRITORIES

*Springer v. Philippine Islands*³⁶ is of interest largely because it affords the Court an opportunity to reaffirm its views on the doctrine of the separation of powers elaborated in the *Myers* case.³⁷ The case arose on the question whether the Philippine legislature could validly deprive the governor-general of the power to vote the stock of certain government-owned corporations and confer it upon a committee of which certain members of the legislature shall be ex officio members. Originally, this power was vested in the governor-general alone.

³² 276 U. S. 413.

³³ Act of Dec. 17, 1914, 38 Stat. at L. 785, as amended by Act of Feb. 24, 1919, 40 Stat. at L. 1057.

³⁴ *Supra*, note 7.

³⁵ 259 U. S. 20.

³⁶ 277 U. S. 189.

³⁷ 272 U. S. 52. See comment in this *Review*, vol. 22, p. 70.

The Court holds that the doctrine of separation of powers is implicit in the Organic Act³⁸ under which the islands are governed. In sections 21 and 22 of that act it is provided "that the supreme executive power shall be vested in an executive officer, whose official title shall be "The Governor General of the Philippine Islands" . . . "that all executive functions of the government must be directly under the Governor General or within one of the executive departments under the supervision and control of the Governor General." It is clear, says the Court, that the function of voting corporation stock is not legislative, and even more clear that it is not judicial. It is therefore logical to conclude that it is executive in character. It cannot, therefore, be delegated to legislative officers under the existing Organic Act. The fact that the territorial statute here under review was not disallowed by Congress does not support the inference that Congress impliedly sanctioned this exception to the doctrine of the separation of powers. Justices Holmes, Brandeis, and McReynolds, who dissented in the Myers case, also fail to agree with the majority in the present case. Mr. Justice Holmes reviews the many cases in which various governmental powers, or admixtures of them, have been delegated to boards and commissions. Congress, for instance, "has established the Interstate Commerce Commission, which does legislative, judicial, and executive acts, only softened by a *quasi*." The control of the Smithsonian Institution affords an almost exact parallel to the statute in the present case. He does not believe that the doctrine of the separation of powers requires, in practical application, the strict and rigid construction adopted by the majority. Mr. Justice McReynolds thinks that the act may possibly be void, but believes that the opinion of the majority goes far beyond the necessities of the case.

V. STATUTORY CONSTRUCTION

Prior to 1916, federal district courts exercised without statutory authorization a form of probation either by suspending sentence or by placing offenders under state probation officers. In *Ex parte United States*³⁹ this procedure was held void. The parole laws and presidential pardon were felt to be inadequate to the situation, because the former can be invoked only after the defendant has served at least one-third of his full sentence and the latter naturally can be

³⁸ Act of Aug. 29, 1916, 39 Stat. at L. 545.

³⁹ 242 U. S. 27.

used only in special cases brought to the President's attention. Congress, accordingly, enacted in 1925 a probation law.⁴⁰ In *United States v. Murray* and *Cook v. United States*⁴¹ the Court is asked by the circuit court of appeals to rule on the question whether this probation can be extended after the offender has begun to serve his sentence. Murray had served one day of his, and Dr. Cook, of North Pole fame, had served some three years. The Court admitted that it was possible to construe the act as permitting probation at any time after conviction, but held that it could more reasonably be held to mean that probation could be extended only before the serving of the sentence, thus making it the equivalent of a suspension of sentence. This would afford a type of clemency not now provided for by law, and would avoid overlapping the powers of pardon and parole.

B. QUESTIONS OF STATE POWER

I. THE FOURTEENTH AMENDMENT

1. *Due Process of Law*

a. *The Police Power.* It is a matter of first-rate importance to the agricultural interests of the country that the Supreme Court has sustained the validity of the state laws authorizing coöperative marketing associations. Such laws exist in forty-two states. The Kentucky act, which is typical of the others, was upheld in *Liberty Warehouse Co. v. Burley Tobacco Growers Coöperative Marketing Association*.⁴² The statute authorized the incorporation of non-profit coöperative associations for the "orderly marketing of agricultural products." Only producers may be members, and the association may contract only with them for marketing. These contracts are declared to be legal. It is made a misdemeanor to induce a breach of a marketing contract, and warehouse-men are made liable in damages to the association for encouraging or permitting the delivery of goods in violation of a marketing contract. One Kielman joined the tobacco growers, coöperative association and signed the regular contract. He delivered 2,000 pounds of tobacco to the warehouse company, which sold it with full knowledge of the circumstances, having previously been requested by the association not to sell. The warehouse, upon being sued, attacked the validity of the statute on four grounds: (1) that

⁴⁰ Act of Mar. 4, 1925, 43 Stat. at L. 1259.

⁴¹ 275 U. S. 347. The two cases were merged.

⁴² 276 U. S. 71.

the association is an unlawful combination in restraint of trade; (2) that it abridges the privileges and immunities of citizens of the United States; (3) that it so impairs liberty of contract as to deny due process of law; and (4) that it denies the equal protection of the laws.

The first objection is thrown out by the Court as raising no federal question. The second is dismissed because corporations are not citizens within the meaning of the privileges and immunities clause. The last objection is overruled on the ground that warehouses are treated the same as others by law and no arbitrary classification can be made out. This leaves the question of due process for consideration. Speaking for a unanimous Court, Mr. Justice McReynolds observes that it is unnecessary to determine whether the liberty of contract protected by the Fourteenth Amendment "includes the right to induce a breach of contract between others for the aggrandizement of the intermeddler—to violate the nice sense of right which honorable traders ought to observe." Forty-two states have laws of this type, and Congress in several statutes has expressly recognized their propriety and utility.⁴³ Of all the state courts which have considered their validity, only that of Minnesota has found such a statute unconstitutional.⁴⁴ After a survey of the many favorable state decisions, the opinion concludes that the act definitely promotes the public interest, that protection to the fundamental contracts is essential to the success of the plan, that some discrimination intended to encourage agriculture has been recognized in previous decisions as valid, and that the states may properly legislate to meet definitely threatened evils. "Liberty of contract," guaranteed by the Constitution, concludes Mr. Justice McReynolds, "is freedom from arbitrary restraint—not immunity from reasonable regulation to safeguard the public interest."

In *Nectow v. Cambridge*⁴⁵ the Court makes plain that the general doctrine laid down in *Euclid v. Ambler Realty Co.*⁴⁶ to the effect that municipal zoning ordinances are valid under the Fourteenth Amendment is not to be given sweeping and indiscriminate application. The Cambridge zoning ordinance was roughly similar to that in the

⁴³ Clayton Act, October 15, 1914, 38 Stat. at L. 730; Capper-Volstead Act, February 18, 1922, 42 Stat. at L. 388; Coöperative Marketing Act of 1926, 44 Stat. at L. 802.

⁴⁴ *Minn. Wheat Growers Coöperative Marketing Assoc. v. Radke*, 163 Minn. 403, 204 N. W. 314, 1925.

⁴⁵ 277 U. S. 183.

⁴⁶ 272 U. S. 365. See comment in this *Review*, vol. 22, p. 94.

Euclid case. Conceded to be valid in its general scope, it was attacked in its specific application to the plaintiff's property. A master was appointed to review the facts. He found that the plot in question lay between a residence and a commercial section of the city. By the ordinance it was placed in the restricted residence class from which manufacturing and mercantile establishments were excluded. Furthermore, by a projected street opening it was so reduced in size that it was wholly worthless for residence purposes. Before the zoning the owner had a contract for the sale of the plot for \$63,000. The master found that the inclusion of the plot in the restricted zone would not promote the public health, safety, and convenience, and was not necessary for the accomplishment of the general plan. Accepting the facts, the Court, speaking through Mr. Justice Sutherland, who wrote the opinion in the Euclid case, holds that the action of the zoning authorities is an arbitrary invasion of the plaintiff's rights amounting to a denial of due process of law. The decision should have the wholesome effect of charging municipal authorities with responsibility not only with respect to the broad purposes and objects of a zoning scheme but also with regard to the reasonable and equitable application of that scheme in its details.

In *Miller v. Schoene*⁴⁷ the Court upheld the Virginia Cedar Rust Act which makes it unlawful to maintain red cedars which are the "host plants" of "cedar rust" within a certain radius of apple orchards, and provides that upon the request of ten reputable freeholders the proper authorities shall investigate the existence of the menace and abate it if found. It is not a denial of due process to protect the state's preponderant interest in its apple crop by sacrificing the lesser interest in cedar trees. A choice is necessary, since by doing nothing the apple crop is sacrificed. There is no delegation of power to the ten freeholders, like that which was proscribed in *Eubank v. Richmond*,⁴⁸ because their request does not govern the action of the state entomologist but merely sets in motion an investigation.

There is no want of due process of law in extending the liability of the employer under the Utah workmen's compensation act to an injury received by a workman while crossing a railroad track on his way to work. The track was immediately adjacent to the plant; there was no other means of access; no protection was extended by the employer save a warning to be careful. The fact that the injured

⁴⁷ 276 U. S. 272.

⁴⁸ 226 U. S. 137.

workman was a trespasser did not affect the master's liability when he had steadily consented to the trespass. This is the case of *Bountiful Brick Co. v. Giles*.⁴⁹

b. *Businesses Affected with a Public Interest.* The business of an employment agency is not so affected with a public interest as to enable the state to regulate the charges made for its services, although it may be subjected to license and reasonable police regulation. This is held in *Ribnik v. McBride*.⁵⁰ The majority opinion, written by Mr. Justice Sutherland, applies to employment agencies the test of public interest which the Court has attempted to work out in *Charles Wolff Packing Co. v. Court of Industrial Relations*⁵¹ and *Tyson and Bros. v. Banton*,⁵² and finds that they do not possess the characteristics necessary to support the rate-fixing power. The business is essentially that of a broker and does not differ substantially from the business of a real estate broker, merchandise broker, or ticket broker. In order to support the power to fix rates, there must exist in the business or the circumstances surrounding it conditions which "justify an indulgence of the legal fiction of a grant by the owner to the public of an interest in its use." The evils urged in connection with the business constitute grounds for police regulation but not price control. Mr. Justice Stone dissents in a long opinion in which Justices Holmes and Brandeis concur. He insists that to say that a business is "affected with a public interest" is to use a term not found in the Constitution and incapable of precise and technical definition. It is broadly a quality attaching to any business "whenever any combination of circumstances seriously curtails the regulative force of competition, so that buyers or sellers are placed at such a disadvantage in the bargaining struggle that a legislature might reasonably anticipate serious consequences to the community as a whole." He adds: "I cannot accept as valid the distinction on which the opinion of the majority seems to me necessarily to depend, that, granted constitutional power to regulate, there is any controlling difference between reasonable regulation of price, if appropriate to the evil to be remedied, and other forms of appropriate regulation which curtail liberty of contract or the use and enjoyment of property."

⁴⁹ 276 U. S. 154.

⁵⁰ 277 U. S. 350.

⁵¹ 262 U. S. 522. See comment in this *Review*, vol. 18, p. 67.

⁵² 273 U. S. 418. See comment in this *Review*, vol. 22, p. 92.

In *Washington ex rel. Stimson Lumber Co. v. Kuykendall*⁵³ the relator had a contract with a towboat company for the hauling of logs at a special price. The company, by reason of the nature of its business, was a common carrier. There is no denial of due process to the relator by an order of the proper state authorities prescribing a higher rate than that specified in the contract and ordering its collection.

Under a Missouri statute the superintendent of insurance is authorized to establish rates on fire, lightning, hail, and windstorm insurance which shall limit the aggregate collections of all the companies "to not more than a reasonable profit." He is not empowered to deal with individual companies or groups of companies. He ordered a ten per cent reduction in all insurance rates covered by the act. The 156 companies in the state attacked the order as confiscatory, since the aggregate return under the new rate will not be enough to yield a reasonable income to all companies engaged in the business. In *Aetna Insurance Co. v. Hyde*⁵⁴ the Court refused to intervene, since it was not alleged by any one company that the rate was confiscatory as to its business. To invoke the Fourteenth Amendment, there must be made out a specific showing of confiscation. No company which is receiving adequate returns can complain on behalf of another which is not.

c. *State Taxation and Eminent Domain.* In *Saltonstall v. Saltonstall*⁵⁵ it is held that no denial of due process is effected by a state statute which taxes the right of succession of the beneficiaries under a deed of trust to the property of a donor when the trust was established prior to the passage of the taxing statute, but when the right to alter the trust remained with the donor until his death, which occurred after the passage of the act. The donor reserved the right to change the gift after the act was passed. The privilege of succession has not been fully exercised and therefore remains taxable. This distinguishes the case from *Nichols v. Coolidge*,⁵⁶ in which the federal inheritance tax was held inapplicable to a bequest made before its enactment.

*Blodgett v. Silberman*⁵⁷ presents the question whether a Connecticut inheritance tax may validly reach bequests made by a resident of

⁵³ 275 U. S. 207.

⁵⁴ 275 U. S. 440.

⁵⁵ 276 U. S. 260.

⁵⁶ 274 U. S. 531. See comment in this *Review*, vol. 22, p. 81.

⁵⁷ 277 U. S. 1.

that state in the form of a partnership interest in a business located in New York and of government bonds kept in New York. It will be recalled that in *Frick v. Pennsylvania*⁵⁸ the Court held that the transfer of tangible property located in another state could not be taxed by the state of domicile. An attempt is here made to have that rule applied to the taxable interests mentioned above. This the Court refuses to do. Instead, it applies the common law maxim, *mobilia sequuntur personam*, which, it says, is so firmly established in federal jurisprudence that it must be accepted "whether it approve itself to legal philosophic test or not." It finds that the partnership interest is merely a chose in action, a right to an accounting, and therefore intangible personal property, or "mobilia" within the meaning of the rule. Federal bonds also are choses in action, mere evidences of debt. Accordingly, the transfer of both of the properties in question was properly taxable by the state in which the owner lived.

A municipal corporation cannot, in the purported exercise of its police power, require a railroad company to allow the use of a part of its property as a public hackstand without the payment of compensation. The land in question, a driveway, had never been dedicated to the public by the company. The railroad is not compelled to allow all taxicabs or their drivers on its premises because it allows some. There can be no serious question as to the right of the city to acquire the rights here claimed, but it cannot take them without paying for them. This is the case of *Delaware, L. & W. R. R. Co. v. Morristown*.⁵⁹

d. *Procedure—Civil and Criminal*. At the last term of Court it was held in *Hess v. Pawloski*⁶⁰ that a state may validly make the use of its highways by a non-resident the equivalent of appointing a state officer an agent on whom process may be served in actions for damages arising out of accidents. In *Wuchter v. Pizzutti*⁶¹ the further question is presented whether a New Jersey statute of this type is wanting in due process because it does not impose on the secretary of state, the officer designated to act as agent, a clear duty to communicate notice of service or process on the non-resident defendant who is being sued. It is held that due process does require a provision in the act making such communication necessary; otherwise, default judgments might

⁵⁸ 268 U. S. 473. See comment in this *Review*, vol. 20, p. 100.

⁵⁹ 276 U. S. 182.

⁶⁰ 274 U. S. 352. See comment in this *Review*, vol. 22, p. 102.

⁶¹ 276 U. S. 13.

be secured against such non-resident without his knowing that suit had been instituted. It is neither fair nor reasonable to impose on the non-resident driver the obligation to make constant inquiry of the secretary of state to learn whether someone has sued him.

There is no denial of due process in a statute which makes the directors of a bank liable to depositors for money lost by the receipt of deposits while the bank was known by the directors to be insolvent; which places upon them the duty of examining into the banks' affairs and knowing its condition; and which makes the failure of the bank after the receipt of such deposits *prima facie* evidence of knowledge of its condition and of assent to the receipt of the deposits. In the case of *Ferry v. Ramsey*⁶² this liability was enforced against a director who had been ill for so long a time that actual knowledge of the affairs of the bank was quite impossible for him. Mr. Justice Holmes meets the argument based on this circumstance by pointing out that the state, had it so desired, could have made the directors liable to the depositors in every case, and that, had that been done, whoever accepted the office of director would have assumed that inescapable risk. Justices Sutherland, Butler, and Sanford dissent on the ground that there is no rational relation between the fact of insolvency and the fact presumed, namely, assent by the director to the deposit.

In *Dugan v. State of Ohio*⁶³ the Court holds that there is no denial of due process in allowing the mayor of a city to impose fines for violation of the state prohibition law when he receives a stated salary, merely because the salary is paid out of the general municipal fund into which the fines are paid. The case is clearly distinguished from that of *Tumey v. Ohio*⁶⁴ in which the municipal judge received a directly proportionate share of the fines which he imposed.

2. Equal Protection of the Laws

Under the authority of a provision of the constitution of Mississippi that "separate schools shall be maintained for children of the white and colored races," school officers excluded a Chinese child from the white school but permitted her attendance at a colored school. The girl's father sought a mandamus to compel her admission to the white school. This is the case of *Gong Lum v. Rice*.⁶⁵ The decision of the

⁶² 277 U. S. 88.

⁶³ 277 U. S. 61.

⁶⁴ 273 U. S. 510.

⁶⁵ 275 U. S. 78.

state supreme court upholding the right of exclusion was commented on in an earlier issue of this *Review*.⁶⁶ The Supreme Court affirms this decision. It is urged that there is no colored school in the district in which the child lives; but the Court says that there may be a colored school outside the district which she may conveniently attend, and that if that is not the case the petition should have so stated. In that event, a different question would have been raised which the Court does not now need to consider. There is no unreasonable discrimination involved in the exclusion. Laws providing for the separate education of white and colored children have been repeatedly upheld. These decisions do not rest upon any theory of racial inferiority or superiority, but upon the ground that separate schools are necessary and desirable to maintain wholesome social relations between the races. They constitute a legitimate exercise of the police power in support of public peace, good order, and convenience. This being so, it cannot be said that a Chinese child is denied the equal protection of the law by being classed with colored people rather than white people in the enjoyment of the equal educational facilities of the state. Certainly the state is not required, in order to keep Chinese pupils from the white schools, to establish separate schools for their exclusive use.⁶⁷

II. CONTRACT CLAUSE

A Mississippi law authorized state revenue agents to investigate cases of unpaid taxes and bring suits for recovery. The agent received no fee or salary, but he did receive a commission of twenty per cent of the amounts collected. When he left office he was allowed to continue pending suits in the name of his successor, and he received the commission and paid all fees and expenses. In 1924 this law was so changed that thereafter suits thus carried over were handled by the new agent, who certified that he had investigated them, paid half of the expenses of finishing them, and received half of the commission. In Mississippi *ex rel* Robertson v. Miller⁶⁸ the plaintiff, before the law went into effect, started suits which were thus continued and which resulted in the collection of nearly ten thousand dollars. Under the new act he received only half the commission. He sues to recover the other half, alleging an impairment of the obligation of contract. The

⁶⁶ Vol. 22, p. 626.

⁶⁷ *Louisville Gas and Elect. Co. v. Coleman*, 277 U. S. 32, deals with classification in taxation under the equal protection of the laws clause.

⁶⁸ 276 U. S. 174.

Court sustains his contention. It is clear that the contract clause does not limit the power of a state to alter the terms of its officers or their future compensation.⁶⁹ But when services are rendered by an officer under a law specifying his pay, an implied contract arises which is protected like any other contract. The retroactive application of the act of 1924 would deprive the plaintiff of part of what he had earned, and that would impair the obligation of the contract under which he became entitled to the commissions.

III. STATE POWER AFFECTING INTERSTATE COMMERCE

1. *State Police Power and Interstate Commerce*

An ordinance of South Bend, Indiana, prohibited the operation of motor busses on its streets unless licensed by the city. No distinction is made between busses doing interstate business, local business, and both types of business. In *Sprout v. South Bend*⁷⁰ this ordinance was attacked by the plaintiff as a violation of the commerce clause and as a denial of the equal protection of the laws. Sprout operated a bus between South Bend and a point in Michigan. The license fee on his bus would be \$50. He was admittedly doing both local and interstate business, though mostly the latter. The Court holds the license requirement void as an interference with interstate commerce. It does not appear that the fee was imposed as an incident to a scheme of municipal police regulation, or that the proceeds were devoted to the upkeep of the highways and were no more than necessary for that purpose. The fee is, therefore, a burden on interstate commerce and void. The portion of the ordinance requiring licensed busses to carry liability insurance issued by a company authorized to do business in Indiana was held not a denial of equal protection of the law, although the Court found it unnecessary to answer the question whether it burdened interstate commerce, since the ordinance was void on other grounds.

In *Hemphill v. Orloff*⁷¹ a Massachusetts trust organized to deal in negotiable paper is held to be not engaged in interstate commerce. This being true, it may be denied the right to carry on business in another state without complying fully with local requirements as to registration and the securing of a certificate of permission to do business. Such a trust is not a citizen within the privileges and immunities

⁶⁹ *Butler v. Pennsylvania*. 10 How. 402.

⁷⁰ 277 U. S. 163.

⁷¹ 277 U. S. 537.

clause of the Fourteenth Amendment. The trust had failed to comply with the Michigan law in securing formal permission to do business, and was therefore not permitted to recover on a promissory note executed to its order in Michigan. The Court found no denial of due process of law in this.

2. State Taxation and Interstate Commerce

In *Gulf Fisheries Co. v. MacInerney*⁷² an attempt is made to invoke the protection of the original package rule against a state tax imposed upon fish sold in the state. The law required a license to engage in the wholesale fish and game business and imposed a tax of one dollar for each thousand pounds of fish sold. The fish are caught in the Gulf of Mexico and landed on the wharf, and are then weighed, iced, and re-iced. Some seventy-five per cent are beheaded and gutted. Most of them are repacked in barrels for shipping. Some are sold to retailers in the city. All fish sold are thus handled. The Court holds that this is not a tax on imports nor on interstate commerce. "None is in an original package, and little in its original form. . . . All the fish sold have, after landing and before paying the tax, been so acted upon as to become part of the common property of the state. They have lost their distinctive character as imports and have become taxable by the state."

In *Interstate Busses Corp. v. Blodgett*⁷³ the Court upholds the validity of a Massachusetts tax of one cent per mile of highway traversed by any vehicle used in interstate commerce as an excise on the use of the highway. The proceeds of the tax are used for road maintenance. The mileage tax is not imposed on cars engaged in intrastate commerce, but they pay a three per cent gross receipts tax less certain deductions. The Court finds that the tax is not an unreasonable charge for the privilege of using the highway and may therefore be sustained under the doctrine of *Hendrick v. Maryland*⁷⁴ and *Clark v. Poor*.⁷⁵ It does not appear that the mileage tax is a disproportionate one when compared with the local gross receipts tax, and consequently the plaintiff's claim of discrimination based on the difference between the two taxes is not well founded.

⁷² 276 U. S. 123.

⁷³ 276 U. S. 245.

⁷⁴ 235 U. S. 610.

⁷⁵ 274 U. S. 554. See comment in this *Review*, vol. 22, p. 105.

IV. STATE TAXATION OF FEDERAL AGENCIES

Wisconsin imposed on all insurance companies doing business in the state an annual license fee in the form of a three per cent tax on gross income from all sources except income from rents on real estate upon which taxes are paid, and except premiums collected on policies of insurance and contracts for annuities. This fee is in lieu of all other taxes except those on real estate owned by the corporation. In *Northwestern Mutual Life Insurance Co. v. Wisconsin*⁷⁶ the plaintiff seeks to recover excess taxes paid under protest during a five-year period, the disputed levy being the three per cent tax on the company's income from United States bonds. The Court holds the tax invalid as to this income. It is well established that "where the principal is absolutely immune no valid tax can be laid upon income arising therefrom." Mr. Justice McReynolds, speaking for the Court, emphasizes the distinction between such a tax as this and some of the state taxes affecting interstate commerce which have been sustained. "It is important to observe," says he, "that although a state statute may properly impose a charge which materially affects interstate commerce without so unreasonably burdening it as to become a regulation within the meaning of the Constitution, no state can lay any charge on bonds of the United States." The tax here amounts to an imposition on the bonds themselves and is therefore void.

A much more dubious result is reached in the case of *Panhandle Oil Co. v. Mississippi*.⁷⁷ Here a state statute imposed on the vendors of gasoline an excise tax of one cent per gallon, later increased to three cents, and then four. The plaintiff protested the payment of this tax on gasoline sold by it to the United States for the use of its Coast Guard Fleet in service in the Gulf of Mexico and its Veterans' Hospital at Gulfport. The Court, by a five to four vote, held that these sales could not be taxed. The majority takes the view that such a levy is a burden on a transaction by which the United States secures its necessary supplies and that it is, in effect, a tax on the United States for the support of the state. The opinion of Mr. Justice Butler is in general terms and does not make clear just how the tax produces the adverse and burdensome results imputed to it. Mr. Justice Holmes dissents in a vigorous opinion, a portion of which merits quotation. He says: "It seems to me that the state court was right [in upholding the tax.] I should say plainly right, but for the effect of certain dicta

⁷⁶ 275 U. S. 136.

⁷⁷ 277 U. S. 218.

of Chief Justice Marshall which culminated in or rather were founded upon his often quoted proposition that the power to tax is the power to destroy. In those days it was not recognized as it is today that most of the distinctions of the law are distinctions of degree. If the states had any power it was assumed that they had all power, and that the necessary alternative was to deny it altogether. But this Court, which so often has defeated the attempt to tax in certain ways, can defeat an attempt to discriminate or otherwise go too far without wholly abolishing the power to tax. The power to tax is not the power to destroy while this Court sits. The power to fix rates is the power to destroy if unlimited, but this Court, while it endeavors to prevent confiscation, does not prevent the fixing of rates. A tax is not an unconstitutional regulation in every case where an absolute prohibition of sales would be one." He goes on to express the opinion that there is no reason why the federal government should not contribute in the same measure as other purchasers for the privileges it enjoys. The government has not protested in any way against the payment of the tax. "I am not aware that the President, the members of Congress, the Judiciary, or, to come nearer to the case in hand, the Coast Guard or the officials of the Veterans' Hospital, because they are instrumentalities of government and cannot function naked and unfed, hitherto have been held entitled to have their bills for food and clothing cut down so far as their butchers and tailors have been taxed on their sales." The whole question is one of degree, and the interference here seems too remote. Justices Brandeis and Stone concur in this opinion. Mr. Justice McReynolds dissents separately, urging that not everyone who sells a gallon of gasoline to the federal government becomes a federal instrumentality and therefore immune from state taxation.

In *Long v. Rockwood*⁷⁸ the Court again divided five to four in holding that a state may not levy an income tax on royalties derived by a citizen from the use of a patent issued to him by the federal government. In this case Mr. Justice McReynolds speaks for the Court. He says: "The power to exclude others granted by the United States to the patentee subserves a definite purpose—to promote the progress of science and useful arts. The patent is the instrument by which that end is to be accomplished. . . . And the settled doctrine is that such instrumentalities may not be taxed by the states." Mr. Justice Holmes again dissents, with Justices Brandeis, Sutherland,

⁷⁸ 277 U. S. 142.

and Stone concurring. He observes that a patent is obviously not an instrumentality of the federal government, but is used by the patentee for his private advantage alone. "Patents would be valueless to their owner without the organized societies constituted by the states, and the question is why patents should not contribute as other property does to maintaining that without which they would be of little use." The mere fact that a franchise comes from the federal government is no more reason for exempting it from state taxation "than is the derivation of the title to a lot of land from the same source."

In the case of *Shaw v. Gibson-Zahniser Oil Corp.*⁷⁹ the defendants are assignees of a departmental oil and gas lease of land belonging to a full-blooded Creek Indian. The land was purchased for him by his guardians while a minor, and the purchase price came from the departmental lease of his restricted allotted lands. It is held that the interest of the lessee in these lands is not such as to make them immune from state taxation as federal instrumentalities in the absence of an express exemption created by statute. The Court observes: "There are some instrumentalities which, though Congress may protect them from state taxation, will nevertheless be subject to that taxation unless Congress speaks." There is no basis here for implying congressional intention to create such exemption.

⁷⁹ 276 U. S. 575.

LEGISLATIVE NOTES AND REVIEWS

EDITED BY CLYDE L. KING

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State Constitutional Development Through Amendment in 1927.

Among a group of seven states which made changes in their fundamental law in 1927, only two, Oregon and California, lie west of the Mississippi River in the newer section of the country. The greatest number of changes in the framework and operation of government are found in New York. Many of the amendments apply to bonded indebtedness and other matters of extreme detail which so crowd American state constitutions, requiring constant alteration to provide for economic, social, and political development.

For convenience in associating the changes with constitutional provisions previously in force, they are herein treated by states rather than by subject matter. Also, the effect of the amendment upon the earlier section of the constitution is indicated where it is not apparent from the nature of the amendment.

South Carolina achieved the record in volume for 1927, adopting twenty-eight amendments, practically all of which were for the purpose of increasing the limit of the bonded indebtedness of specified political subdivisions of the state. Five of the twenty-eight, however, related to school districts, exemptions from county taxes, and excluding the Tugaloo River from the eminent domain provision of Art. xiv., Sect. 1.¹ These amendments were submitted to the voters on November 2, 1926, but they did not become effective until 1927, since the constitution of South Carolina requires further submission to the General Assembly after approval by the electorate. This practice is not usual among the states, in most of which the voters have the final voice. The General Assembly of 1927 approved the amendments, whereupon they were appended to the fundamental law.

For the second time in two years, New York considered a long list of amendments. On November 3, 1925, the elective officers of the state were reduced by amendment to four—governor, lieutenant-governor, comptroller, and attorney-general—and authority was

¹ A statement of the votes cast for each amendment will be found in *Report of the Secretary of State of South Carolina for the Fiscal Year 1926*, Pt. II., pp. 76-102.

given to consolidate the executive departments. On November 8, 1927, eight alterations of the constitution were effected, of the nine proposed. The unacceptable proposal increased the terms of office of elective state officers and of state senators from two years to four years.² Governor Smith and the Democratic organization led the attack on this plan, basing their objection upon the selection of 1928 as the beginning of the new terms. Governor Smith favored an amendment of similar purpose placing the election of the above-named officers and senators in off-years instead of in presidential years, so as to accentuate state and local issues. The amendments which were approved require the governor to submit a budget to the legislature;³ exclude all water debts of a city when ascertaining the power of the city to become otherwise indebted, thereby permitting New York City in particular to borrow up to \$300,000,000 for the construction and for equipment of new rapid transit facilities;⁴ permit the legislature to relieve cities and counties of the full 50 per cent share of the cost of eliminating grade crossings, whenever desirable;⁵ increase the salary of the governor from \$10,000 to \$25,000, of the lieutenant-governor from \$5,000 to \$10,000, and of each member of the legislature from \$1,500 to \$2,500;⁶ make the governor the formal head of the executive department of the state government, correcting an oversight in the reorganization plan of 1925;⁷ authorize the construction of a state highway to the top of Whiteface Mountain;⁸ permit counties, under legislative authorization, to acquire surplus property by condemnation in constructing parks, public places, and highways to form suitable building sites abutting such constructions, with the privilege of future sale or lease if desired;⁹ and prevent the annexation of territory by a city without the consent of the residents of the territory, given by a majority vote on a referendum taken for that purpose.¹⁰

Virginia authorized the exemption of wives and widows of veterans of the Civil War from the payment of the state poll tax as a prerequisite to the right to register or vote;¹¹ changed the appropriation year of the state to coincide with the fiscal year;¹² and allowed counties having a population greater than five hundred per square mile to impose taxes or assessments upon abutting landowners for local public improvements.¹³ These amendments were approved by the voters November 8, 1927.

² Yes, 578,863; No, 1,256,157.

³ Yes, 1,291,990; No, 446,107.

⁴ Yes, 961,632; No, 799,867.

⁵ Yes, 1,339,332; No, 397,205.

⁶ Yes, 1,073,802; No, 683,999.

⁷ Yes, 1,197,931; No, 488,095.

⁸ Yes, 1,082,864; No, 602,395.

⁹ Yes, 1,085,441; No, 533,705.

¹⁰ Yes, 1,144,872; No, 527,388.

¹¹ Yes, 53,046; No, 17,930.

¹² Yes, 36,235; No, 28,411.

¹³ Yes, 44,214; No, 19,799.

On September 20, 1927, the people of New Jersey registered their approval of a proposal to enable the legislature to enact general laws under which the municipalities, other than counties, may adopt zoning ordinances limiting and restricting to specified districts, and regulating therein, buildings and structures, according to their construction and the nature and extent of their use.¹⁴

Michigan joined the ranks of those states permitting the incorporation, by two or more cities, villages, or townships, of metropolitan districts comprising territory within their limits, for the purpose of exercising the usual municipal functions.¹⁵

Wisconsin added one amendment to the state constitution at the April election, introducing for purposes of taxation such classifications as to forests and minerals, including or separate or severed from the land, as the legislature shall prescribe.¹⁶ In November, 1926, the salary of the governor was fixed at \$5,000 and recall of elective public officers was approved by the electorate.

In the newer section of the country, Oregon at a special election of June 28, 1927, acted favorably upon three changes of its fundamental law. The provision denying suffrage to negroes, Chinese, and mulattoes was repealed.¹⁷ Persons appearing before circuit judges and waiving indictment for the commission of crimes or misdemeanors may be charged therewith on information filed by the district attorney.¹⁸ Registration becomes a necessary qualification for voting.¹⁹

Of twenty-three proposals under consideration in California, fifteen were approved at the general election of November 2, 1926. Art. XIII of the constitution was extended to authorize taxes of $4\frac{1}{2}$ and 5 per cent of the gross receipts of common carriers on the public highways. These taxes are divided equally between the state and the counties for highway maintenance. No other levies are made upon the carriers, and the legislature is empowered to change the percentages.²⁰ Sect. 14 of Art. XIII is amended to tax short-line steam railroads, not over 250 miles in length, at the same rate as electric railroads, i.e., $5\frac{1}{4}$ per cent of gross receipts, unless this classification is held to violate the national Constitution, in which event all steam railroads shall be taxed at the rate of 7 per cent of gross receipts.²¹ A bond issue of \$8,500,000 is authorized for the erection (or com-

¹⁴ Yes, 293,155; No, 85,918.

¹⁵ Yes, 210,880; No, 200,490.

¹⁶ Yes, 179,217; No, 141,888.

¹⁷ Yes, 69,373; No, 41,877.

¹⁸ Yes, 64,956; No, 38,774.

¹⁹ Yes, 55,802; No, 49,682.

²⁰ Yes, 751,379; No, 211,618.

²¹ Yes, 643,993; No, 263,104.

pletion) and equipment of state and state university buildings.²² California has resorted to fractions in her constitution, as evidenced by the amendment of Sec. 1 $\frac{1}{4}$ of Art. XIII to exempt from taxation property in the possession of disabled veterans, widows and widowed mothers of such veterans, the ladies of the Grand Army of the Republic, and the California Soldiers' Widows Home Association.²³ Also, cemeteries and other places used for the permanent deposit of the human dead are exempted from taxation and local assessment.²⁴

Absentee voting is liberalized by extending its benefits to qualified voters occasionally but not regularly required to travel, upon affidavit of expectation to be absent from their respective precincts, or who are engaged in the civil or congressional (as well as the military or naval) service of the United States or of the state. The same privilege is provided for those who are unable to go to the polls because of injury or disability.²⁵ Any increase of stock or bonded indebtedness of a corporation must be approved by the holders of at least two-thirds of the amount in value of the stock, instead of by a majority. It is no longer necessary, however, to give sixty days' public notice of a meeting to be called for that purpose.²⁶ It is now possible, through legislative action, to segregate school districts with like interests into classes as changing conditions warrant.²⁷ Whenever two or more propositions for indebtedness by political subdivisions are submitted to the voters at the same election, the votes for and against each shall be counted separately. A two-thirds vote is necessary for adoption.²⁸ Forest trees, for forty years after planting or after the removal of the original timber, are exempt from taxation, in any effort to encourage reforestation.²⁹

Non-partisan candidates, including judges, may be elected at the primary upon receiving a majority of votes cast thereat. Where two or more candidates are to be elected to an office, and more candidates receive a majority than are to be elected, those securing the highest number of votes of those receiving such majority, equaling the number of candidates to be elected, shall be declared elected.³⁰

The makers of California's constitution wisely limited yearly government expenditures to yearly income. This limitation is more drastic than its makers intended it to be, because it develops a "dry

²² Yes, 650,282; No, 311,619.

²³ Yes, 482,525; No, 468,643.

²⁴ Yes, 540,367; No, 292,134.

²⁵ Yes, 550,676; No, 308,061.

²⁶ Yes, 427,086; No, 345,694.

²⁷ Yes, 455,088; No, 344,103.

²⁸ Yes, 391,614; No, 352,137.

²⁹ Yes, 619,062; No, 276,473.

³⁰ Yes, 595,413; No, 210,915.

season," so called, each year, extending from July first, the beginning of the fiscal year, to the first Monday in December, the end of the period for paying the first half of taxes. During this interval, when some of the county funds are depleted, warrants have to be registered until money is available and interest has to be paid upon them. It can readily be seen that the interest thus paid is loss to the county. Accordingly, the city or county treasurer is required, upon resolution of the governing body of a political subdivision, to transfer, temporarily, funds not exceeding 85 per cent of the taxes accruing thereto, to meet obligations promptly without incurring interest charges. The money thus transferred is to be replaced from the first tax money received.³¹

Sect. 4 $\frac{3}{4}$ of Art. VI is altered to allow the legislature to confer upon appellate courts, in cases where jury trial is not a matter of right or is waived, the power to ascertain facts from evidence and to make findings of fact contrary or additional to those made by a trial court.³² Coördination of judicial business is provided for by the creation of a judicial council of eleven judges, under the chairmanship of the chief justice, to regulate court procedure and practice and to assign, through the chief justice, judges to congested calendars or to vacant posts until such are filled by temporary appointment or election.³³ Legislative reapportionment is prescribed immediately following each federal census, the 1928 legislature to redivide the state on the basis of the 1920 census. A reapportionment commission, consisting of the lieutenant-governor, attorney-general, surveyor-general, secretary of state, and superintendent of public instruction, is to function if the legislature fails to act.³⁴

W. LEON GODSHALL.

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State Public Utilities Legislation in 1927. State regulation of public utilities is one of the major experiments of present-day government. The American states, attempting to escape public ownership on the one hand and the laissez-faire attitude on the other, have almost unanimously adopted the expedient of creating a new agency—the public utility commission. The objective urged in justification of the creation of such an agency is the "ideal of special knowledge, flexibility, disinterestedness, and sound judgment in applying broad

³¹ Yes, 387,905; No, 351,785.

³² Yes, 521,858; No, 230,284.

³³ Yes, 468,750; No, 256,252.

³⁴ Yes, 437,003; No, 363,208.

legislative principles that are essential to the protection of the community, and of every useful activity affected, to the intricate situations created by expanding enterprise."¹

Establishing the exact nature of the public utility commission, and clearly defining its powers and duties by legislation, is the first problem in the field of effective state regulation of public utilities. The second problem is that of securing and retaining a personnel in the public utility commission and its staff which possesses the high qualifications demanded by the importance of the service. The third problem is concerned with establishing satisfactory rules as a basis for rate-making. Rate control is the heart of the whole matter of effective regulation. The fourth problem is how to establish effective co-operation between the states and the federal government, and among the states themselves.

During 1927, the legislatures of thirty-five states enacted either new public utilities laws or amendments to existing public utilities legislation. The significant legislation in this field may be considered in relation to the four major problems indicated above. The powers and duties of the public utility commissions were either more clearly defined or increased and extended by legislation in some twenty-nine states. Among these, thirteen enacted measures applying to the regulation of motor vehicles carrying persons or property for compensation on the public highways.²

The important features of such motor vehicle regulations are: (1) Permits must be obtained from the public utilities commission before motor vehicles may be used on public highways to transport persons or property for hire. The commission is usually instructed to grant the application for such permit only when circumstances "justify the issuing of a certificate of convenience and necessity therefor."³ Such a policy is intended not only to protect the public in the use of the highways, but especially to protect the existing transportation agencies from what the commission considers to be uneconomical or unjust competition. (2) The commission, furthermore, is frequently granted

¹ Charles E. Hughes, "Some Aspects of the Development of American Law," *New York Bar Assoc. Report*, 1916, p. 270.

² Alabama, Arizona, California, Connecticut, Missouri, New Jersey, North Dakota, Rhode Island, South Carolina, Utah, Washington, West Virginia, Wyoming.

³ Utah, *Laws*, 1927, Ch. 42. See also Arizona, *Laws*, 1927, Chap. 62; California, *Statutes and Amendments to the Code*, 1927, Chap. 64; Connecticut, *Public Acts*, 1927, Chap. 203; West Virginia, *Acts*, 1927, Chap. 49.

the authority "to provide for the supervision, inspection, and regulation . . . , in the public interest, of the operation of motor carriers, and of their services, rules, regulations and practices, fares, rates, charges and facilities, franchises and licenses."⁴

Several states designated enterprises and industries hitherto considered private as being "affected with a public interest," and extended to such the regulatory authority of the public utilities commission. For example, the Arizona legislature declared the storage of cotton or wool for hire to be a public utility subject to rate-fixing.⁵ Minnesota extended the law relating to inspection of wheat and other grain to the several kinds of grass seeds, and delegated the necessary regulatory powers to the railway and warehouse commission.⁶ North Dakota added to the duties of the board of railroad commissioners that of regulating grain and seed warehouses, and authorized the board to be appointed as trustees for insolvent grain warehousemen.⁷ Oregon placed under the jurisdiction of the public service commission corporations "organized to build dams, booms, drive and catch logs and timber products therein."⁸ While the legislature of Kansas vested the administration of the workmen's compensation act in the state public service commission.⁹

Additional powers of regulation and control over existing public utilities were entrusted to the commissions in at least fifteen states. Since the major portion of such legislation relates to minor details or to powers commonly granted to commissions in other states, only those additions which mark a significant tendency or a new departure will be mentioned. California provided that the important utilities (named in the act) must obtain from the railroad commission "certificates of public convenience and necessity" before beginning new construction.¹⁰ A somewhat similar law in Maryland provided that gas and electric corporations must obtain approval of the commission before beginning new construction.¹¹

⁴ Alabama, *General Laws*, 1927, No. 336. See also Arkansas, *Acts*, 1927, Act 99; Missouri, *Laws*, 1927, p. 402; Utah, *Laws*, 1927, Chap. 42; Washington, *Session Laws*, 1927, Chap. 166; West Virginia, *Acts*, 1927, Chap. 49; Wyoming, *Session Laws*, 1927, Chap. 98.

⁵ Arizona, *Laws*, 1927, Chap. 79.

⁶ Minnesota, *Laws*, 1927, Chap. 334.

⁷ North Dakota, *Laws*, 1927, Chaps. 155, 156.

⁸ Oregon, *General Laws*, 1927, Chap. 455.

⁹ Kansas, *Laws*, 1927, Chap. 232, Sect. 33.

¹⁰ California, *Statutes and Amendments to the Code*, 1927, Chap. 129.

¹¹ Maryland, *Laws*, 1927, Chap. 338.

The tendency to bring municipalities, in their operation of utilities, under the control of state commissions was furthered in a few instances. An act of the Maryland legislature authorizes the sale or disposal of municipally owned electric plants, or gas plants, only upon the approval of the public service commission. Such sale or disposal is further subject to the approval of a majority of the voters voting upon the question at an election, in case the requisite number of electors petition for such an election.¹² In this connection it is interesting to note a law of Oklahoma relating to the disposal of any important municipally owned public utility. Such disposal is authorized only after the approval of sixty per cent of the qualified voters of the municipality voting at an election called for such purpose.¹³

It is discouraging to be compelled to report that state legislatures in 1927, in most instances, showed no appreciation of the immediate necessity of furnishing adequate salaries for commissioners and technical assistants. No state as yet has been willing to appropriate the money sufficient to perform even the detailed technical work necessary for effective regulation.

The majority of the states in 1927 increased appropriations to an amount only barely sufficient to meet the added expenditures incurred for the new or extended services of the commission. A few states, however, did make a slight beginning toward providing for superior administration. For example, the salary of the secretary of the commission in Illinois was increased from \$5,000 to \$7,000.¹⁴ The legislature of Maryland reestablished the office of general counsel and appropriated fairly liberally for it.¹⁵ The state of Ohio authorized the appointment of an executive secretary and the employment of additional experts by the commission.¹⁶ The legislature of Virginia proposed a constitutional amendment for the consolidation of the several agencies having to do with utilities into one state corporation commission.¹⁷

It seems evident that the success of effective regulation depends to a marked degree upon the integrity, fearlessness, fairmindedness, and superior knowledge of the members of the public utility commission

¹² Maryland, *Laws*, 1927, Chap. 690.

¹³ Oklahoma, *Session Laws*, 1927, Chap. 94.

¹⁴ Illinois, *Laws*, 1927, p. 702; *Laws*, 1921, p. 706.

¹⁵ Maryland, *Laws*, 1927, Chap. 201.

¹⁶ Ohio, *General Laws*, 1927, p. 424.

¹⁷ Virginia, *Acts*, Extra Session 1927, Chap. 32.

and the technical staff. The utilities which are the subjects of regulation offer the highest rewards to men of the largest ability in law, engineering, accounting, and administration. Such utilities are able to draw into and retain in their employment the most successful men in their several fields. Until the public awakes to the realization that men possessing ability equal to that of men in the employment of the utilities must be drawn into the public service, and that no salary is high enough which fails to draw and retain the best talent, we shall continue to see the best public agents, after a few years of experience, drawn off into the service of the utilities, or men of mediocre ability alone filling the regulatory positions. Under such conditions, regulation is likely to be little more than a farce.

Next to securing a satisfactory personnel, the establishment of a satisfactory basis for rate-making is the most important problem in effective state regulation. Rate regulation, the heart of the whole matter of effective regulation, is still in a formative period, and unfortunately is still in a somewhat chaotic state. The controversy continues between the prudent investment theory on the one hand and the reproduction cost theory on the other. Few, if any, states have worked out a satisfactory method of making an initial valuation. Opinion and practices differ with regard to the weight that should be given to "going concern value." The problem of arriving at a "fair return" is awaiting the solution of what is a "fair value." A just classification of rates which protects against unjust preference in rates is, in most states, out of the question, with an overworked and undermanned commission and staff.

The most advanced steps (and practically the only ones) taken by legislatures in 1927 toward the solution of the rate-making problem were taken by the legislature of Indiana. The public service commission was instructed, in fixing rates, not to consider the compensation of officers and employees of public utilities when such compensation was found to be excessive.¹⁸ A more noteworthy suggestion of the Indiana legislature for lifting the rate-making process out of chaos was offered in a joint resolution instructing the senators and representatives from Indiana in Congress to introduce and procure the enactment of a measure "declaring that the basis of all calculations as to rates to be charged by any public service corporation shall be, as nearly as can be ascertained, the honest and prudent investment in the property at present used and useful for the convenience of the public; and that

¹⁸ Indiana, *Laws*, 1927, Chap. 146.

the rates shall be such as shall provide such public service corporation a reasonable return upon such investment.”¹⁹ In order to carry out unhampered a policy of regulation considered by the legislature to be fair, reasonable, and just, the legislature of Indiana further petitioned Congress to enact legislation “limiting the jurisdiction of the courts of the United States in all cases that may be filed therein by public utilities seeking relief from orders issued by public service commissions to such utilities as have first exhausted all legal remedies given by the courts of the respective states.”²⁰

The development of holding companies controlling the operations of utilities extending over many states—such holding companies being largely free from state regulation—and the close connection between interstate rates and intrastate rates led several states in 1927 to enact legislation looking toward closer coöperation between commissions of the several states and between the state commission and the federal agencies. Such coöperation was sought by Maryland through an enactment giving the commission “full power and authority to make joint investigations, hold joint hearings, and issue joint or concurrent orders in conjunction with any official board or commission of any state or of the United States, whether . . . the commission shall function under agreements or compacts between states, or under concurrent powers of states to regulate interstate commerce, or as an agency of the federal government, or otherwise.”²¹

A law of Minnesota authorizes the state commission to coöperate with the Interstate Commerce Commission for the purpose of harmonizing state and federal regulation of common carriers with specific instructions to approve freight rates “which depart from the distance principle now required by state law, to the extent necessary in its judgment to harmonize state and interstate rates. . . .” The act also authorizes the state commission to conduct joint hearings with the Interstate Commerce Commission.²²

The legislature of Maine authorized the public utilities commission, with the consent of the governor and council, to hold joint hearings with the Interstate Commerce Commission “with respect to the relationship between rate structures and practices of carriers subject to the jurisdiction of the public utilities commission and the Interstate

¹⁹ Indiana, *Laws*, 1927, Chap. 270.

²⁰ *Ibid.*, Chap. 269.

²¹ Maryland, *Laws*, 1927, Chap. 196.

²² Minnesota, *Laws*, 1927, Chap. 405.

Commerce Commission.”²³ New Jersey prepared for future state-federal coöperation by authorizing the board of public utilities commissioners “to exercise any power or authority over interstate commerce” within the state of New Jersey whenever, and in case, such control is authorized by an act of Congress. Coöperation was also provided for, in authorized cases, with boards of other states and with the Interstate Commerce Commission.²⁴

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Recent Personnel Legislation. Without question, the most significant personnel legislation in the United States in the past year has been the passage of the so-called Welch Act amending the salary schedules contained in the Personnel Classification Act of 1923, which were applicable to some forty or forty-five thousand positions in the District of Columbia; making these rates applicable to some 135,000 positions outside the District of Columbia; and again directing the Personnel Classification Board to make the survey of more than a hundred thousand positions outside the District of Columbia which was ordered in the Personnel Classification Act of 1923, but which the Board has persistently refused to make.

The Welch Act was frankly labeled by its sponsors as emergency legislation intended to provide particularly for the low-paid workers in the federal service until such time as the survey ordered could be made and a report submitted to Congress. At the hearings on the bill it was brought out clearly that the data justifying any salary increase were so fragmentary as to be practically worthless; moreover, it was not even mentioned that in the District of Columbia, at any rate, the 45,000 employees affected by the act constitute what is probably the highest paid large group of miscellaneous workers in the world, with both sexes fairly equally represented. Under the act, the lowest salary provided for college graduates without experience performing “under immediate supervision, simple and elementary work requiring professional, scientific, or technical training as herein specified but little or no experience” is \$2,000. No differentiation at all is made as to the kind of professional or scientific work. For clerical workers performing under supervision “the simplest routine office work,” the beginning rate is \$1,260; beginning stenographers with no experience,

²³ Maine, *Laws*, 1927, Chap. 188.

²⁴ New Jersey, *Laws*, 1927, Chap. 85.

and only such training as is represented by graduation from a business high school or commercial business college start at \$1,440. The highest salaries specifically mentioned in the act are \$9,000, but still higher are authorized. In the lower grades, employees in the District of Columbia generally received an immediate increase of \$60 to \$120 a year; while, owing to the wording of the act, in the higher grades the increases generally were larger, amounting in a considerable number of cases to \$500, \$1,000, or even \$2,500, a year.

This result is strictly in accordance with the wording of the act, but it occasioned considerable unfavorable criticism in the early days of December when Congress met. The higher salaries, which, as has been stated, were meant to be made mandatory, became effective last July 1. No appropriations for paying the increased salaries were made during the last session of Congress, but it was understood that the departments were to make the increases, were to pay the larger amounts from the current appropriations, and were to ask for deficiency appropriations at the session of Congress beginning in December, 1928. Some twenty million dollars is being asked for that purpose, and an equal amount was included in the estimates submitted by the Bureau of the Budget for the fiscal year beginning July 1, 1929.

The hasty character of the legislation is indicated not only by the lack of data on which to base any legislation but also by several other provisions in the act. For example, department heads are directed so to administer the act that the employees affected "shall retain . . . the same relative position or positions within their respective grades as they hold at the time the act goes into effect." For nearly all the grades under the old law there were seven rates of pay, while under the new act there are often only four, five, or six grades. Obviously, retaining the same relative position on a four, five, or six rung ladder that obtained under a seven rung ladder was impossible. The difficulty was solved temporarily by a ruling of the Comptroller-General containing a mathematical formula which pleased nobody greatly. For employees outside the District of Columbia, department heads were directed to base their rates upon a classification into services and grades which had not been made at the time the act took effect, and which cannot be made except as a result of the survey now in process.

The survey directed by the act is in many respects the most important provision, notwithstanding the mandatory salary increases of twenty million dollars. A duties classification for some 135,000 positions is directed, and also a study as to proper rates of compen-

sation. The Personnel Classification Board, evidently taking heed of the unfavorable criticism heaped upon it for its failure to carry out the mandate in the classification act of 1923, has been prosecuting the directed study through the summer and fall, though without any great amount of vigor. At the rate of progress, it was impossible to present any complete report at the present session of Congress, and therefore an interim report only, according to press reports, is to be made. It seems improbable, at the rate the Board is working and with the staff it has, for it to complete the report required by the Welch Act before July 1, or possibly even October 1, 1929.

There has been other federal personnel legislation of lesser significance. Because of the confused and overlapping system of personnel administration in the federal service, with a score or more of federal agencies having a finger in the personnel pie, every Congress is asked to enact numerous measures giving relief to this, that, or the other group actually or allegedly in need of it. As to compensation matters, for example, bills were passed giving the customs employees higher salaries; giving additional compensation for employees in the postal service who do night work; and making more liberal the sick leave provisions for postal employees. The act providing for the taking of the sixteenth decennial census in 1930 contained no provision for the scientific classification and compensation of some ten thousand temporary positions, or for the selection of their incumbents in accordance with advanced personnel practices. Many other bills failed of enactment, including one liberalizing the federal retirement system so as to increase the maximum annuity from \$720 to \$1,000 and making the optional retirement age lower.

Representatives of organizations interested in personnel administration in the federal service have been giving considerable thought to a better organization of the federal government personnel system and have practically agreed that the only solution is the establishment of a department of administration, with a political secretary, a non-political under-secretary, and four non-political directors heading, respectively, bureaus of the budget, personnel administration, *matériel*, and special investigations concerned with structure and operating efficiency. A proposed measure providing such a federal department of administration has been largely agreed upon by some dozen national organizations, some with a deep technical interest in personnel administration and in efficiency in government, and others with a broader interest but having greater lobbying strength. The measure will be

pushed vigorously at the next regular or special session of Congress.

Personnel legislation in the States. At the session of the California legislature in 1927, the form of the state civil service commission was changed. Originally the commission consisted of one commissioner and two associates, with the former giving full time to the work and the latter only a small fraction of their time (taken up mostly with quasi-legislative and quasi-judicial functions). In 1925 the form was changed so as to provide for a single commissioner. In 1927 the original form was restored. This change was due to dissatisfaction not so much with the single-member civil service commission as with the manner in which the legislation was enacted; through an alleged error, the wrong bills were engrossed and signed by the presiding officer in both houses and by the governor. It seems probable that legislation will be introduced in the 1929 session placing the central personnel work in a new division of the department of finance, but retaining the civil service commission to exercise quasi-legislative and quasi-judicial functions.

In Colorado a determined attempt is being made to rescind that portion of the constitution which provides for the merit system in the state service. The constitutional provision contains almost as much detail as many statutes. The petition required for a vote on a repeal of a provision of the constitution was submitted last August, but the secretary of state ruled that many of the names were improperly affixed. The matter was taken to the courts, and the lower court upheld the ruling of the secretary of state. The appeal to the supreme court could not be decided in time to permit the matter to be brought to a vote in November.

In the last session of the New Jersey legislature a bill was introduced to abolish the state civil service commission with five members, and to substitute instead a single member. By the terms of the measure Charles P. Messick, who for a number of years has been chief examiner and secretary of the New Jersey commission, was named as the commissioner for a term of five years at a salary of \$10,000. The bill was not passed, but instead a commission to investigate the operations of the civil service commission was named; and later the proposal was so changed as to give the commission power to investigate all state departments. The commission selected Senator Chase as chairman. During the summer it investigated alleged election irregularities and never got to the civil service commission. It is reported that at the current session of the legislature an effort is to be made to change

the civil service law so as to deprive the civil service commissioners of pay.

County and Municipal Personnel Legislation. At the last session of the Michigan legislature a bill was passed providing for a county civil service commission to administer personnel matters in Wayne county, in which Detroit is located. The legality of the act was attacked in the courts. The lower court has upheld the act, but an appeal has been taken to the state supreme court, where it is still pending. In the meantime, no attempt has been made to give effect to the provisions of the act.

The central employment system established for Alameda county, in which Oakland is located, has successfully weathered the first storms, including attacks in the courts and the machinations of some department heads to break down the system through ineffective methods of administration. The Alameda county civil service commission has worked out a system of rules, has developed a duties classification, has taken steps to standardize salaries, has done a large amount of good testing work, and has otherwise begun to function in the manner intended by the sponsors of the act.

An interesting situation has arisen in Duluth, where the rules of the civil service commission put into effect by the city council provide for a system of service (efficiency) ratings. The commission is without funds to employ even a full-time secretary, and consequently has never carried out this provision of the rules. When an attempt was made to promote several patrolmen to sergeant without taking account of the service ratings which are required by the rules, but which are not available, the action was attacked with success in the courts, and the civil service commission was enjoined from making the promotions. There appear to be two ways out—to change the rules or to provide sufficient funds to employ a staff requisite to carry them out.

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State Forestry Legislation, 1927-28. Notwithstanding the fact that comparatively few of the state legislatures held sessions during the past year, considerable advance was made in forestry legislation. Certain of the states materially strengthened their existing laws in various ways.

Rhode Island authorized the bureau of forestry to purchase and re-sell tree seedlings at cost to private owners within the state. It

also amended its forest fire protection law in certain respects. Appointments of forest wardens are required to be approved by the chief of the bureau of forestry, who is also given authority to purchase, when appropriation has been made therefor, such special forest fire equipment and supplies as in his judgment may be necessary in the more heavily wooded areas of the state; and the legislature is authorized to appropriate annually such funds as may be needed therefor. Other changes require town treasurers to transmit copies of all fire-fighting expense accounts to the chief of the bureau of forestry within a specified limit of time (forty-five days from the date of the fire) for approval and transmission to the state auditor; and town forest wardens are required, in the case of all fires that burn over more than one acre of land, to make report thereon to the chief of the bureau of forestry within two weeks. Failure on the part of either a town treasurer or a town forest warden to comply with these requirements causes the town to forfeit reimbursement by the state of its share of the costs involved. The state commissioner of agriculture is empowered to make such rules and regulations as he may deem helpful in the matter of preventing and suppressing forest fires; and the chief of the bureau of forestry is given authority to call the town and district forest wardens together, from time to time, for conference and instruction as to methods of forest fire suppression. By a further change, the provision forbidding the setting of fire in the open air from the first of March to the first of December, without written permission of the town forest warden or the district forest warden, has been expanded to require, during the months of April and May, in addition to such permit, the personal supervision of the town forest warden or the district forest warden, at the expense of the permittee. An additional amendment authorizes the organization, by town forest wardens, of special emergency corps to aid in the suppression of forest fires.

Massachusetts made provision for forest fire patrol in certain towns in Barnstable county, and also provided a penalty for the violation of rules and regulations relating to hunting and fishing in certain of the state forests. New Jersey extended its forest fire protection laws to include salt marshes or meadows. New York increased the maximum pay of fire-wardens and fire-fighters to fifty and thirty-five cents, respectively, per hour; empowered the conservation department to enter into coöperative agreements with municipalities and persons for fire control work; and authorized villages to ac-

quire and use lands for forestry purposes. It also broadened the general powers of the department by authorizing it, in addition to its forest preserve powers and duties, to establish and manage other state parks and parkways in the forest preserve counties, and in the counties of Albany, Jefferson, Montgomery, Schenectady, and Schoharie, and to acquire lands for such purposes when moneys have been appropriated therefor.

Wisconsin changed its single-headed conservation commission to one of six members, with power to employ a conservation director, and revised and expanded the commission's general powers and duties for the protection, development, and use of forests. It also increased its authorization for the acquirement of lands for national forests, from 100,000 to 500,000 acres, and required approval by the county boards of the general boundaries of the areas selected.

Kentucky made provision for the distribution of moneys accruing to the state from national forest reserves—the amounts, in each instance, to be apportioned to the several counties in proportion to the reserve area located in each county, with the provision that the "forest reserve fund" so created be placed to the credit of the public schools and public roads by the respective magisterial districts in which the lands are located.

Alabama passed a progressive measure which made it the duty of the state commission of forestry to ascertain and make due record of the location and character of all lands to which the state holds the legal title (either for itself or as trustee), and all state parks and lands belonging to any institution or department of the state, or to any township or the inhabitants thereof; and to make similar investigation in the case of such other lands as the state or any institution thereof is entitled to which have not been set aside for the state or the institution, and to take immediate action to acquire the same for the state or institution. The lands belonging to the various ownerships are required to be classified as "used" or "unused" (the term "unused" applying broadly to lands not utilized for the immediate purposes of any institution or department), and it is also required that the record shall show whether the lands are valuable chiefly for agriculture, mining, timber culture, or any other purposes, and the uses to which they are being put. The commission, subject to any and all accrued rights to the lands in question, and acting as technical adviser to the state or other claimant to the land, is given jurisdiction over and control of all said state parks and unused lands so long

as they remain such, and is required to protect them and to recommend from time to time, to the governor, or to the department or institution to which the use of the lands is devoted, such policy as it deems desirable in regard thereto. Power is also given the commission in connection with these lands to make exchange of scattered tracts, when advisable in order to effect concentration of ownership. As regards all unused lands owned absolutely by the state, the commission is required to determine which of them are best suited to forest culture, and to list them accordingly in the office of the state auditor. Thereafter, at the direction of the governor, the lands so listed are required to be administered by the commission either as state forests, for purposes of forest culture, or as state parks, for state park purposes.

Somewhat similar legislation was enacted by West Virginia, which created a state forest and parks commission (composed of the governor, the commissioner of agriculture, the director of agricultural extension, the state geologist, and the chairman of the game and fish commission) to investigate lands held by the state, including those purchased for or forfeited to the state for non-payment of taxes, with a view to determining the following points: the availability of the lands as state forests or parks; how the state may best coöperate with the federal government in furthering the plans of the federal forestry service for the Monongahela National Forest, including Seneca Rocks and other sections in the proposed purchase area; the usefulness and availability as state parks of various other specified areas, including ways and means of acquiring and administering the same; and such other matters pertaining to forests and parks as the commission shall deem advisable. The commission is required to make a comprehensive report to the legislature at its next session, covering the results of this investigation, and to accompany the report with such bills as may be necessary to carry out its recommendations.

Two states, Wisconsin and New York, enacted specially noteworthy legislation upon which to base broad, far-reaching policies for the encouragement of the growing of timber. Wisconsin passed an act putting the recently adopted amendment to its constitution into operation by changing the method of taxing lands devoted to growing timber, so that the land is now subject to a specific annual tax, paid to the town treasurer, and with the state advancing fifty per cent of the amount. The timber on the land remains free from taxation until it has matured, when a severance tax is paid to the state. This

"forest crop" act, taken in connection with the other forestry measures mentioned above, rounds out a fine record of progressive forestry legislation in that state.

New York, in like manner, took steps toward laying an adequate foundation for the state's proposed program of reforestation upon an extended scale. As an initial move in that direction, a resolution had been introduced at the previous session proposing an amendment to the state constitution with a view to authorizing a bond issue totalling, in a period of twenty years, \$100,000,000, to provide means for the acquisition and reforestation of lands. While no action upon the resolution was taken at that session, the matter was followed up at the last session by the enactment of a law creating a temporary commission to investigate generally the subject of reforestation, with special reference to ascertaining the location, value, and area of lands in the state not suitable for agriculture, which might be utilized for reforestation, and to report the best means of promoting and financing such work. The commission is required to submit a report by the first of March, 1929, accompanied with bills embodying such proposed legislation as may be deemed necessary to carry its recommendations into effect; and \$50,000 is made available for the investigation. In other words, legislative authority has been secured for taking preliminary steps toward determining the best means of both promoting and financing the proposed undertaking. This marks a stride forward in the past year, the effect of which, in view of the extended scale upon which this work is planned, will doubtless be felt far beyond the confines of the state.

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NOTES ON RURAL LOCAL GOVERNMENT

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City-County Consolidation in Allegheny County, Pennsylvania.

The adoption by the people of the state of Pennsylvania of a constitutional amendment authorizing the formation of a consolidated city and county government embracing the whole of Allegheny county is perhaps the outstanding event of the year in rural, as it is in urban, local government. The county of Allegheny includes, besides the city of Pittsburgh and three other cities, sixty-six boroughs and fifty-two townships. The area of the county is 740 square miles, approximately half of which is devoted to agriculture.

The constitutional amendment adopted in November provides that the consolidated city and county government, which is to bear the name of City of Pittsburgh, is to have the powers of the county government as it has previously existed plus certain powers of a municipal character. The amendment is to be carried out by means of a charter in which these additional powers must be specified. At this writing (December) the charter is in process of preparation, and no one can yet say with certainty what it will contain; but the municipal powers in addition to the ordinary powers of a county government the inclusion of which in the charter has been most frequently suggested are those relating to charities, health, through highways, parks and recreation, and planning.

There is also in the amendment a provision authorizing the charter to provide for the creation of special districts for the purpose of carrying on practically any work, utility, or service of interest to the people of these districts. The only limitation upon this power is that the districts must be made up from more than one city, borough, or township.

All other powers hitherto possessed by the local government units within the county are to remain in their present hands. The amendment, indeed, goes so far as to guarantee the continued existence of each of these units with its present name and its present boundaries, unless it voluntarily votes to ally itself with another unit.

The adoption of the forthcoming charter will put an end to a long conflict between the desire of Pittsburgh to expand and the desire of

the outside communities to retain their independence. The idea of this federated municipality really originated with the League of Boroughs and Townships, which had for years been fighting the extension of Pittsburgh by annexation. While the amendment was adopted by a very slender majority in the state as a whole, it carried in Allegheny county by a vote of more than two to one. The distribution of this vote is interesting as indicating the attitude of the urban and rural parts of the county toward the amendment:

	<i>Yes</i>	<i>No</i>
Pittsburgh	81,818	21,542
Third class cities		
Clairton	575	797
Duquesne	767	996
McKeesport	1,040	7,968
	<hr/>	<hr/>
Total	2,382	9,761
 Boroughs	 49,279	 21,830
Townships	16,329	11,230

The strongest opposition to the plan was found in the third class cities. In fact, the opposition was localized in McKeesport and vicinity. The other two third class cities are located nearby. The neighboring boroughs and townships also recorded majorities against the measure. The townships, on the whole, showed themselves less favorable to the amendment than the boroughs, but much more favorable than the third class cities. In thirty-six of the boroughs the majority was better than two to one. A similarly favorable result was achieved in only sixteen of the townships. Such an outcome was to be expected; the surprising thing is that the townships should, as a whole, have reported a majority for the amendment.

In fact, however, the scheme of federated consolidation has many points to commend it. First of all, there is its feasibility. Granted that there are problems in such a metropolitan community as Allegheny county which demand common solution, the easiest—in fact, the only practical—method of getting such a consolidation is by assuring the individual units their continued existence. Any plan of out and out annexation would, in Allegheny county at least, meet furious opposition. If such a plan had been forced through by legis-

lative fiat, the scars of the conflict would not have healed in a generation.

In the second place, the federated plan is financially advantageous. It means that the central budget is to be charged with the cost of only those services which need to be centralized, while the cost of all other services is borne locally. It has been the uniform experience of cities making extensive annexations that the annexed territory has immediately demanded the extension of all forms of municipal services for its benefit. It is obvious that such extensions would be impossible over any such area as that of Allegheny county. In case of out and out annexation, the same thing would have happened there that has happened elsewhere: city improvements would have been doled out to the outlying districts by the well-known process of log-rolling. It is also true that in the event of out and out annexation the outlying communities lose control of their own taxing and bonding powers. Whatever they get from the city must be log-rolled from the city hall. Under the federated plan each community will have the benefit of its own resources for self-development. The rural communities need not pay city taxes for which they would receive no compensating improvements. On the other hand, the downtown taxpayers need not be bled white for the extension of city services to territories that do not need them. All in all, there is a great deal to be said for the wisdom in such circumstances of centralizing only those functions which actually need to be dealt with centrally. That this fundamental idea has been sold to the people of Allegheny county, the vote on the sixth of November amply testifies.

This is the first large-scale experiment in city-county consolidation, as contrasted with city-county separation, which has even come near to adoption, with the exception of the unsuccessful attempt in Alameda county, California, in 1922. There is a certain boldness in the proposal to combine urban and rural units in what may properly be called a regional government. The fact is, however, that the automobile and the paved highway, by making far places near, have outrun the imagination of legislators and political scientists. The community solidarity of such a region as Allegheny county was a fact long before it was recognized. The amendment of this year, with its prospective charter, is after all merely an attempt to bring the legal into conformity with the actual situation.

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The New Charter of Alameda County, California. Alameda county, California, presents a very interesting study in county government in the United States. It is as diversified in its area, its industries, and its various units of local government as any region on this continent. It comprises 468,000 acres of land on the continental side of San Francisco Bay. Of this territory, 224,171 acres are farming land whose products bring in a total yearly revenue of \$20,000,000. Within the county, whose total population runs well over 600,000, are the urban communities of Oakland, Berkeley, Richmond, Alameda, Piedmont, Albany, Emeryville, Hayward, and San Leandro. The largest city is Oakland, with a present population of 350,000. It is also the county seat.

Within this area arises every type of governmental problem. Oakland and Berkeley are physically merged into a large metropolitan area; while separated from them by only a narrow estuary is the city of Alameda. From this massed urban population one may travel out into a country-side of large ranches of more than 10,000 acres unbroken since the days of the Spanish grants. From the level region skirting the bay and covered by the sea-mist one may push back to the hills of Piedmont well out of the fog belt and bathed in the clear California sunshine. The inner harbor at Oakland is the port for a foreign commerce which totals \$54,000,000 annually. From the industrial plants fringing the water-front at Emeryville the county extends to the cherry groves at San Leandro which give promise of the richer Santa Clara farther south. This area is organized into a water district known as the Eastbay Municipal Utility District, which has authorized the sale of \$39,000,000 worth of bonds to build pipe lines, tunnels, and reservoirs to bring a plentiful supply of water from the Sierras two hundred miles away.

The county has the problems of the university and the commuter. From this region on the eastern side of the bay 60,000 people commute daily by the swift ferries to San Francisco. At Berkeley is located the University of California, with 10,000 students present on its campus every winter, and creating those problems of public governance which have always accompanied universities since the Paris of the Middle Ages.

On January 18, 1927, Alameda filed a new charter with the secretary

¹ *Concurrent and Joint Resolutions and Constitutional Amendments*, Ch. 10, p. 2029. 47th Legislature, 1927.

² Constitution, Art. XI, Sect. 7½.

of state at Sacramento.¹ This charter was framed by the citizens of the county in pursuance of authority granted by the state constitution to the counties of California to prepare charters.² According to this document, provision may be made for the election of a board of fifteen freeholders to frame a new charter whenever three-fifths of all the members of the board of supervisors deem it wise, or whenever fifteen per cent of those who voted for the last governor in the county sign a petition.

When the board of supervisors passes the ordinance calling for the election of the freeholders to prepare a new charter, the election takes place within a period of from twenty to sixty days. Within one hundred and twenty days after they are elected, the freeholders prepare the charter. This must be published at least ten times in a daily newspaper of general circulation printed, published, and circulated within the county.

From thirty to sixty days after the completion of this publication the charter election must be held. If a majority of voters voting thereon vote "yes," the charter shall be deemed to be ratified. Then it must be presented at the next session of the legislature for its approval or rejection as a whole, without power of alteration or amendment. Approval may be given by concurrent resolution; and if approved by a majority vote of the members elected to each house, such charter becomes the charter of the county and the organic law thereof relative to the matters therein provided.

Under the charter the elective county officers are the members of the board of supervisors, the auditor, assessor, district attorney, sheriff, superintendent of schools, and county treasurer. The appointive officers are the members of the board of education, members of the board of law library trustees, members of the civil service commission, the coroner, county clerk, fish and game warden, health officer, horticultural commissioner, license collector, livestock inspector, members of the probation committee, probation officer, public administrator, public defender, purchasing agent, recorder, surveyor, and tax-collector.

The chief governing body of the county is the board of supervisors. This consists of five members chosen by popular vote. Each member must be an elector of the district which he represents, must reside therein during his incumbency, must have been such an elector for at least one year immediately preceding his election, and must have been elected for such district. Here we have the unique California

type of small board of supervisors elected by districts. In most of the counties of America where the board of supervisors is representative of particular districts it is quite large, and usually when there is a small board the members are elected at large.

The salary of each supervisor is \$350 per month. In the event of a vacancy in the board, the governor appoints. The board elects its own chairman, who is merely *primus inter pares*. A quorum consists of a majority of the board.

The board is authorized to appoint all county officers other than elective officers and all officers, assistants, deputies, clerks, attachés, and employees whose appointment is not otherwise provided for by the charter. Except in the cases of appointees to the unclassified service, all appointments by the board must be made from the eligible civil service list. The board is authorized also to provide by ordinance for the compensation of elective and appointive officers, assistants, deputies, clerks, attachés, and employees unless such compensation is otherwise fixed by the charter.

The supervisors have authority to provide by ordinance for the number of justices of the peace and constables in each township. The board may also provide by ordinance for the number and fix the compensation of such other judges and officers of such inferior courts as are now, or may be hereafter, provided by the constitution or by general law. They can also create additional officers and boards and fix their salaries. The supervisors have power to provide, publish, and enforce a complete code of rules not inconsistent with general laws, or with the county charter, prescribing in detail the duties and the systems of office and institutional management, accounts, and reports for each of the offices, institutions, and departments of the county.

The board lets all county contracts. It also may create a county institutions' commission, a welfare council, and a public health center, and provide for the appointment of the members thereof, to serve without compensation; fix their terms of office; prescribe their duties; and may consolidate any two or more of said commissions.

One progressive feature of the charter is that the supervisors, after actuarial investigation and by a four-fifths vote, may provide for the purchase of annuities or insurance for county employees, the basis of which, in whole or in part, must be contribution by the employees to be benefitted, provided that such ordinance shall be approved at a general election by two-thirds of the voters voting

thereon. Whenever a vacancy occurs in an elective county office other than a member of the board of supervisors, the board appoints to the vacancy.

The board may provide for the formation of road districts for the care, maintenance, repair, and supervision of roads, highways, tunnels, viaducts, conduits, subways, and bridges. It may provide for the issuance and sale of bonds of county, district, and division for improvements, provided two-thirds of the qualified voters in the area approve, and provided that provision is made for an annual tax to pay the interest and to take care of the sinking fund.

In each township there are to be as many justices of the peace as are provided by general law, and not more than one constable for each justice's court, together with such clerks, deputy constables, and other officers as may be authorized by the board of supervisors; provided, however, that if the legislature substitutes some other system of inferior courts for the system of courts of justices of the peace now established, then, upon the establishment of such inferior courts, the office of constable in each township shall cease to exist.

One interesting and somewhat unusual feature of the charter is that the constables are appointed by the sheriff from the eligible civil service list. The compensation of justices of the peace of each township and of constables is fixed by the board of supervisors, and must be by salary only. Constables are ex-officio deputy sheriffs and are under the supervision and direction of the sheriff. Each constable is subject to the orders of the sheriff, must serve process within his township or elsewhere when requested, and must also perform all the duties required of him by law.

The charter further directs that, in addition to the powers and duties conferred upon district attorneys by the laws of the state, the district attorney shall be the attorney for the public administrator, and shall, in the matter of all estates which the public administrator has been appointed to administer, collect the attorney's fees allowed therein by law, and pay the same into the county treasury.

One of the most interesting things in the charter is its provision for the office of public defender. This official receives \$4,000 per annum and is required to "devote all his time to the duties of his office and shall not engage in the practice of law except in the capacity of public defender."³

³ *Statutes of California*, 47th Session, 1927, Chap. 871.

The charter directs that "the public defender, upon request of the defendant, or upon order of the court, shall defend, without expense to him, all persons who are not financially able to employ counsel, and who are charged with the commission of any contempt, misdemeanor, felony, or other offense. He shall also, upon request, give counsel and advice to such persons, in and about any charge against them upon which he is conducting the defense, and he shall prosecute all appeals to a higher court or courts, of any person who has been convicted upon any such charge, where, in his opinion, such appeal will, or might reasonably be expected to, result in the reversal or modification of the judgment of conviction. He shall also, upon request, prosecute actions for the collection of wages and of other demands of persons who are not financially able to employ counsel, in cases in which the sum involved does not exceed one hundred dollars, and in which, in the judgment of the public defender, the claims urged are valid and enforceable in the courts. He shall also, upon request, defend such persons in all civil litigation in which, in his judgment, they are being persecuted or unjustly harassed. He shall also have the powers and perform the duties now or hereafter prescribed by general law."

Subject to such rules and regulations as are laid down by the board of supervisors, the county surveyor has direction and control over all construction, maintenance, and repair of roads, highways, tunnels, viaducts, conduits, subways, and bridges. He also has the control and management of all county rock quarries and gravel pits and all other materials, property, and instrumentalities in connection with construction work.

The county has a civil service system obviously copied after the civil service system at Washington. There is a commission of three members appointed by the board of supervisors for a term of six years. This commission chooses its own president. Each commissioner receives ten dollars for each meeting of the commission which he attends, provided there are not more than five meetings in any calendar month. The commission appoints a chief examiner and such other employees as it deems necessary.

The civil service of the county is divided into the unclassified and the classified service. The unclassified service includes: (1) all officers elected by the people, and their chief deputies; (2) all assistants, deputies, and other employees in the office of the district attorney; (3) not to exceed six confidential deputies in the office of the sheriff;

(4) all appointive boards and commissions; (5) members of the county board of education; (6) law library trustees; (7) members of the civil service commission; and (8) all persons serving the county without compensation. The classified service comprises all positions not specifically included by the charter in the unclassified service except places requiring peculiar and exceptional qualifications of a scientific, professional, or expert character where competitive examinations are impracticable.

The civil service commission provides for the standardization and classification of all positions in the classified civil service. It prepares and holds open competitive examinations and provides for the successful candidates a period of probation of not more than six months. In the event of a vacancy, the appointing authority notifies the civil service commission, which certifies the three highest on the eligible list. A veteran receives five additional points to his rating. All civil service employees are required to avoid every form of political activity. One interesting provision of the charter is that "in the employment of persons in the service of the county, where sex does not actually disqualify, and where the quality and quantity of service is equal, there shall be no discrimination in selection or compensation on account of sex." Apparently the Californians accept Mr. Wilson's dictum that the eight-hour day has the sanction of the judgment of society, for they provide that "eight hours shall constitute a day's work for mechanics and others engaged in manual labor in the service of the county."

The charter provides for a thoroughgoing budget system. On or before the first Monday in July every department, officer, court, district, district board or commission is required to file with the auditor an estimate of expenses for the next fiscal year. On or before the first Monday in August the auditor transmits to the board of supervisors a budget containing an estimate of expenses for the current fiscal year and an estimate of revenue, exclusive of taxes upon property, and certain other necessary information. The board proceeds to the consideration of the budget at public hearings of which due notice has been given. On the first Tuesday in September the supervisors pass the annual appropriation ordinance, which takes effect immediately. No salary or compensation of any appointive officer or employee can be increased except by provision made in the annual appropriation ordinance.

The board of supervisors may appropriate a sum each year for

urgent necessities; but no money can be paid out of this appropriation unless authorized by a four-fifths vote of the board. The charter directs the board to prepare a preliminary budget to cover all expenditures required between the first day of July in each year and the passage of the annual appropriation ordinance. All property in the county must be re-appraised by experts for purposes of assessment at least once in every five years.

In view of the number of municipalities contained within the county, the charter provides that "the board of supervisors and all county officers shall assume and discharge municipal functions of cities and towns within the county whenever requested to do so by such cities or towns, upon such terms as may be agreed upon between the county of Alameda and the city or town requesting the performance of such functions."

Any elective or appointive county or township officer may be recalled by the electors at any time after he has held his office six months. The petition must be signed by fifteen per cent of those who voted in the county for governor at the last election, and must contain a statement of the grounds on which the recall is sought. On receiving the petition, the county clerk submits it to the supervisors, who arrange for a special election not less than thirty-five days nor more than forty days thereafter. If a regular election is to occur within a period of thirty-five to sixty days, the recall election may be held then.

"Upon the sample ballot there shall be printed in not more than two hundred words the grounds set forth in the recall petition for demanding the recall of the officer, and upon the same ballot in not more than two hundred words the officer may justify himself. There shall be printed on the recall ballot as to every officer whose recall is to be voted on, the following question: 'Shall (name of person against whom the recall petition is filed) be recalled from the office of (title of office)?' Following which question shall be the words 'yes' and 'no' on separate lines, with a blank space at the right of each in which the voter shall by stamping a cross (X) indicate his vote for or against such recall. On such ballots under each question there shall also be printed, if the officer sought to be recalled be an elective officer, the names of those persons who shall have been nominated as candidates to succeed him in case he shall be recalled at such election, but no vote shall be counted for any candidate for said office unless the voter also voted on the question of the recall of the person sought to be recalled therefrom. The name of the person sought to be recalled shall

not appear on the ballot as a candidate for the office." In the event that the incumbent is recalled, the highest candidate on the ballot gets the position. Before a petition of recall can be filed against a person in the classified service a complaint in writing must be made to the civil service commission.

The citizens of Alameda believe in patronizing one another, for the charter provides that preference shall be given to Alameda labor and to Alameda products in all contracts.

As time goes in America, Alameda is a comparatively new county. Age has not given it traditions like Fairfax county, Virginia, or Lancaster county, Pennsylvania. The glamour of great figures who have contributed to the nation's history does not contribute to its civic sense. However, it does have in a very real way a county consciousness similar to that of the old colonial counties of the Atlantic seaboard. It is in many ways a geographical unit, peopled by an essentially homogeneous population and blessed with a sense of its own great future. It is a favored region; and in a vigorous, intelligent, and progressive manner the county is making a great effort to solve the very real problems of local self-government.

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Recent Proposals for Reorganizing County Government in Virginia.

The movement for reorganizing state government in Virginia is not new. Investigations have been made by legislative committees every biennium since 1911. However, the results of these investigations were so small that the General Assembly of 1926, on the recommendation of Governor Byrd, provided the necessary appropriation for a survey by experts, a method that has proved successful in several states. The New York Bureau of Municipal Research, on the invitation of Governor Byrd, made an intensive study of state and county government. The survey of county government is embodied in a separate report which covers one hundred pages of small type. It presents a splendid picture of the economic condition, and of the organization and procedure of the government, of the Virginia counties.

As to governmental organization, the survey shows that the Virginia counties have small boards of supervisors who are elected from magisterial districts. It is recommended by the Bureau that the magisterial districts be eliminated as far as possible, and that supervisors

be elected at large. It is also suggested that the board devote itself to legislative functions. In other words, the present duties of the county board acting as supervisors for road work and poor relief might logically be transferred to the county administrator or county manager. It is reasonable to expect that the result of encouraging the counties to assume more legislative functions as to local affairs would be to get abler men on the board of supervisors, as well as to lessen the burden on the state legislature.

Each county, as the investigation shows, has between thirty and forty offices and boards. The Bureau recommends the abolition of several county offices and boards and a centralization of administrative authority in the hands of a responsible county administrator elected by the voters of the county, or a county manager appointed by the board of supervisors.

There is no need for maintaining the ancient office of coroner, at least in its present form. The office should be abolished, it is suggested, and the duties placed in the hands of the commonwealth's attorney, who might appoint a physician temporarily to perform the functions of coroner when there was occasion. It is recommended that the commonwealth's attorney be appointed by the governor, in order to remove him from the dilemma that he is often in as to whether he should harken to the mandate from the people who elected him or to the mandate which he receives from the laws of the state under which he brings prosecutions.

It is shown that there is dissatisfaction with justice as dispensed by the elected justices of the peace, and that there exists a general conclusion that the system has outlived its usefulness. It is suggested that the office may be rejuvenated by replacing the justices of the peace with trial justices appointed by the judges of the circuit courts. It is thought that the prestige of the latter would attach to the office and would tend to raise it from the low point that it now occupies in the esteem of the public.

The ancient office of constable, which is now filled by election from magisterial districts, should be abolished by giving the sheriff the power to appoint enough deputies to handle the duties of constables. The sheriff, the Bureau suggests, should be appointed and removed by the county administrator. He should also be separated from the county jail, from which he has been receiving the most lucrative part of his income. The jail might be administered as a public institution rather than as a commercial adjunct to the sheriff's office. By being

placed on an adequate salary basis, the sheriff would be expected to become more efficient in making criminal investigations and arrests.

The county clerks should assume the duties of jury commissioners. It is recommended that expense and delay incident to summoning jurors could be avoided by requiring the county clerk to be present at different times at several convenient places in the county for the purpose of examining the qualifications of jurors.

Other county offices scheduled for abolition are the superintendent of the poor and the overseers of the poor. Under the proposed plan of organization, these duties would be taken over by the superintendent of welfare. The investigation shows that the office of county surveyor is superfluous in Virginia. The county administrator should appoint a surveyor whenever there is a demand for such services. It is suggested that the functions of the examiner of records and of the inheritance tax commissioner, who are representatives of the state tax commission, could easily be carried out by the county commissioner of revenue. In the recent past, Virginia had as many commissioners of the revenue as there were magisterial districts. The legislature provided in 1926 that each county should have one commissioner.¹ This is a progressive step, but it should be carried further by providing for appointive assessors. The successful experience of other states, as is pointed out, is the strongest argument that the work of assessment can be improved by such a change. In Virginia the state tax commissioner should appoint the county commissioners of the revenue. There is need, as the survey of financial conditions in the state shows, for more centralized control.

One of the problems found by the survey is that of the poor county. There are as many as fourteen counties in which the primary local functions of roads, schools, and health cannot be carried out without substantial subsidies from the state. This problem might be solved, the Bureau suggests, by consolidating two or more adjacent counties under one government, or by creating administrative areas consisting of two or more counties in which county functions can be merged. The latter suggestion can be more easily realized, as county pride in the older counties of Virginia would not support the former. The creation of administrative areas by uniting two or more counties would make for the more efficient performance of such functions as health, public welfare, roads, and schools. Several counties have taken such

¹ *Acts of Assembly*, 1926, p. 462.

steps in regard to poor relief, with marked success as to the institutional care of the poor.

Practical and valuable recommendations are made as to financing road work and the county schools. A single county road levy should take the place of district road levies. Special road funds should be discontinued and all expenditure for roads budgeted.

As a matter of practice, the county boards of supervisors have nothing to do with school finances. The school funds are under the control of the school board, which adopts the school budget and notifies the county board of the amount of tax levy required to meet it. The result is that Virginia counties have two governments, one for schools and one for other governmental purposes. Many able students of local government are not in sympathy with the contention that the schools are "*sui generis*, sometimes entirely unlike anything else in the range of governmental functions."² It is recommended by the Bureau that the division superintendent of schools prepare an estimate of the needs of the public schools, which should be submitted to the county manager and budgeted with the estimates for other county work.

A law passed by the General Assembly in 1926 requires the board of supervisors of each county to prepare a county budget.³ The law has not been complied with. In fact, as the survey shows, it is impossible for the county clerk, the officer upon whom the duty of preparing the county budget would under the present organization devolve, to prepare a budget, since the accounting system now in use does not furnish the proper data. There is no uniform classification of expenditures and revenues that can be used in preparing budget estimates, and furthermore the fee system removes a large part of the county operating expenses from the control of a local budget. The Bureau recommended that each county should have a local accounting officer, who might properly be designated controller; or the county clerk might act as controller. In the event that the county clerk assumes these duties, his fiscal function of collecting delinquent taxes should be transferred to the treasurer, because, to restate an old axiom, the duties of the auditing office should not be confused with those of the assessing, collecting, or purchasing agent.

The fee system has been a problem in Virginia since early times. A law was passed by the House of Burgesses in 1772 to regulate the

² Anderson, *American City Government*, p. 94.

³ *Acts of Assembly*, 1926, p. 902.

practice.⁴ In 1914 the West Act was passed by the General Assembly. As amended in 1926, the measure places limits upon the fees which can be retained by clerks, treasurers, commissioners of the revenue, sheriffs, constables, etc.⁵ The maximum personal compensation, which varies according to the office and population of the county, runs from \$1,000 to \$7,500. If there is a surplus above the compensation allowed for salary plus legitimate office expenses, it is turned over to the local or state treasury, depending on the office. There is a natural temptation for the local officers to expand their office expenses and cut down the excess that they would otherwise have to pay into the treasury. The survey shows that this is actually done by over-manning the office force by bringing in relatives and political supporters. It has not been the general practice of the state fee commission, which is busy with its other duties, to make detailed investigations as to legitimate office expenses.⁶

The fee system has been criticized as derogatory to efficient administration because the fee officer tends to neglect the small unremunerative jobs and devotes his attention to the duties that bring in easy returns. However, the survey shows that this is not a serious defect in the working of the system in Virginia. The bad effect is found, rather, in what may be called the bureaucratic attitude of the officer. "Most of the fee officers seem to feel that the offices belong to them personally, that the deputies and clerks are their own and not the county's, and that any service performed for the public is done as a personal favor." This is a rather severe indictment, but one which is inevitable when public office is farmed out at a price. The Bureau points out that the abolition of the fee system must wait for county reorganization. While it might be abolished immediately in the larger counties, the placing of the offices in the smaller counties upon a salary basis would increase the cost of county government.

As the numerous general and special laws on the subject show, there is no uniform policy of legislative control over county expenditures. The survey revealed the following conditions: "A great part of the county and school bonds are being sold privately without competition; bonds have been issued under the authority of special

⁴ *Journals of House of Burgesses of Va.*, p. 214, quoted by Bureau of Municipal Research, p. 35.

⁵ *Acts of Assembly*, 1926, p. 350.

⁶ *Acts of Assembly*, 1927, p. 260. The state fee commission was abolished by the General Assembly in 1927 and its duties were vested in the controller.

laws to fund deficits and other current expenditures; bonds are issued in all of the counties for periods of years far in excess of the life of the improvements financed; for instance, thirty year highway bonds have been issued for fifteen year highways, and bonds are, therefore, still outstanding for roads that have blown away. There is no proper control over the sinking fund, with the result that levies for this fund are not systematically made. Investments of the sinking funds are not made to good advantage. In one county it was found that the sinking fund account was not separate, with the result that the fund had been used to meet regular appropriations. In another county the sinking fund had sustained a loss because of a poor investment." The Bureau recommends that these conditions be corrected by a revision of the state code with regard to county indebtedness, together with definite provision for the state management of sinking funds and state approval of the legality of bond issues.

It is the usual practice for the county to use all the banks in the county as depositories for county funds. The survey shows that there are several counties which do not keep accounts with depositories, and that it is the rule for the banks not to pay any interest on the county funds which they handle. The Bureau estimates that the income of the county governments would be increased approximately \$200,000 if the banks in every county were required to pay two per cent interest on active accounts and four per cent on inactive ones. It is likewise suggested that all collections of the treasurer should be deposited in banks daily. The controller should see that this is done by getting a duplicate of each deposit slip certified by the bank. He should also see that the treasurer keeps an account with the depository, and that these accounts balance with his own controlling account of the money in the bank. It is recommended that county purchasing be centralized under the county administrator; or the county may take advantage of the offer of assistance of the state purchasing agent to buy supplies through his office.

Several changes have recently been made in county government in Virginia. Besides enacting a law requiring county budgets,⁷ the General Assembly in 1926 abolished land assessors and conferred

⁷ The special session of the General Assembly in 1927 amended this act to provide that the boards of supervisors should file with the director of the state budget a copy of the county budget. The state director by this act is required to furnish the board of supervisors instructions and forms. *Acts of Assembly*, 1927, p. 127.

their duties on the commissioners of the revenue⁸; segregated local and state revenues⁹; passed a law which requires county treasurers and city auditors to file with the state accountant a detailed account of the annual receipts and disbursements, and requires the state accountant, on the basis of this information, to publish annually a statement showing the comparative cost of local government¹⁰; and created the office of state tax commissioner, with powers to supervise the administration of the tax laws of the state.¹¹

The work of the state tax commissioner has clearly justified this centralization of responsibility, because he has been active in acquainting the local commissioners of the revenue with the tax laws of the state and with the best procedure in assessment by sending them information and by lecturing to many groups of commissioners throughout the state. The state accountant has also been conscientious in carrying out the duties imposed upon him by the General Assembly. His annual report on the comparative cost of local government in Virginia is a compilation of information of value to the investigator seeking knowledge of this character.

In March, 1928, the General Assembly passed two measures which partially carry out recommendations made by the Bureau of Municipal Research. Senate Bill No. 125 enables the counties by popular election to employ a county engineer or a county manager. The county engineer would be required to devote his full time to supervising road construction. The county manager, if the county should elect to employ one instead of a county engineer, would be given broader duties than the latter officer. For instance, he would have charge of all matters "relative to the public roads and bridges, and other public works and business of the county except public schools." Moreover, he would be required to prepare the county budget, to act as county purchasing agent, and to keep the board of supervisors informed concerning the business of the county. In other words, the county which

⁸ *Acts of Assembly*, 1926, p. 875.

⁹ *Ibid.*, p. 955.

¹⁰ *Ibid.*, p. 937. The General Assembly in 1927 abolished the office of state accountant and vested his duties in the auditor of public accounts (*Acts of Assembly*, 1927, p. 113).

¹¹ *Acts of Assembly*, 1926, p. 252. As part of the plan for reorganization, the special session in 1927 abolished the state tax commission, but retained the commissioner as head of the department of taxation. *Acts of Assembly*, 1927, p. 106.

avails itself of a county manager, under the provisions of the statute, will have a responsible executive.

House Bill No. 189, besides codifying the school laws of the state, has several new features. In the first place, it provides for the abolition of the school trustee electoral board which has been performing the anomalous function of electing the county school board. On the expiration of the terms of the present incumbents, the county school board will go out of existence, and its duties will be assumed by the county board of supervisors. The statute, moreover, provides that school funds shall be budgeted with the funds collected for other county functions. All funds for school purposes are to be handled by the county treasurer in the same manner as other county funds. The board of supervisors, at their discretion, and instead of making a special school levy, may make cash appropriations out of the general county levy. But this appropriation must not be less than the amount which would result from a minimum school levy for the operation of the schools. It is seen that this law provides for one uniform system of county government instead of two.

It can in no wise be conceded that Virginia has a monopoly of bad county government. But perhaps in no state of the Union has a more penetrating searchlight been thrown upon this almost forgotten field of government than has been turned upon it in Virginia by the Bureau of Municipal Research. That the General Assembly did not adopt more of the recommendations is due to the fact that it was engaged in the governor's program for reorganizing the state administration. In any case, changes in county government will come slowly, because the legislature is controlled by county politicians who are naturally interested in maintaining the status quo.

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FOREIGN GOVERNMENTS AND POLITICS

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Political Developments in Italy. "Italian unification" is an old phrase, today acquiring new meaning. Whatever Garibaldi would have thought of D'Annunzian and Fascist squadristism, however Cavour would have viewed the modern cult of Machiavelli, avowed by Mussolini, one may be sure that Mazzini would have been shocked at the chauvinist absolutism now proudly boasted by the Fascist régime: absolutism in the sense of an executive guided by its own intuitions and conscience, free from political criticism or parliamentary control; absolutism also in a sense for which English words are wanting, except as we boldly transliterate, and hope that "intransigence," "totalitarianism," will be understood to mean an all-inclusive hundred-percentedness. Italy is called by Mussolini "monolithic," all of one piece, tolerating anti-Fascist criticism no more than other states tolerate treason; all in and for Fascism, nothing against Fascism. Indeed, Fascism, without ceasing to be a party, has become the state. For parties in Edmund Burke's sense there is supposed to be no more need than for the factions Washington abhorred. Opposition such as is normal in the Cavourian scheme of parliamentary government—responsible critics, loyal and ready to take their turn in governing—is superfluous, a mere obstacle or obstruction to efficiency. None is permitted—in parliament, in press, in platform, or even in theory.

What has just been said is presented, not by way of judging, but only of summarizing, the attitude firmly (courageously or arrogantly, according to the observer's prejudices) maintained by the powers that be in Italy today. The recent months have seen several important steps taken in the direction of institutional realization of this view. The year 1928 may perhaps be denoted as the period in which the attempt was made to give a régime that had already a *de facto* existence a higher, *de jure* standing by formal parliamentary sanction. It may be left to the constitutional metaphysicians to discuss whether ex-Premier Nitti is right in impugning this whole proceeding as unconstitutional and void because of the original taint of violence in Fascism's seizure of office (1922), continued by violence in purging out the Aventinist parties from Parliament in 1925, not to speak of

assassinating the two leaders Amendola and Matteotti, leaving, as anti-Fascists would say, a rump parliament which could give no *de jure* standing to anything.

First may be mentioned a ministerial shift that took place in July, 1928, the first in three years. Volpi resigned, the "man of the Banca Commerciale," who for three years had presided over the regulation of debt relations with Great Britain and the United States and also the stabilization and revalorization of the lira. Fedele also resigned, the professor of history who, as minister of public instruction, had been attempting to execute, with adaptations, the Gentile "fascistissima" reform of public education. To succeed Volpi, Mosconi was promoted from one of the technical services of the Treasury; to Fedele's position, Belluzzo was moved from the ministry of national economy, his place being filled by promoting Martelli, formerly under-secretary of communications. On the same occasion there was an extensive reshuffling of under-secretaryships, places being found for eight new recruits to the ministerial group, according to Mussolini's familiar practice of giving a large number of young Fascist deputies short terms of executive duty. New governing personnel is thus introduced to the responsibilities of executive power; it is tested and promoted or dismissed as seems wise to the all-powerful One.

There may have been personal desire for relief on Volpi's part, as has long been rumored, or even an unwillingness to continue to bear the heavy responsibility for the gold value of the lira at a figure that was chosen for the sake of political prestige (beating Poincaré's franc) and which is imprudently high, if judged by economic criteria. But, taken as a whole, the process of recasting the ministry was emphatically not a ministerial "crisis." Instead, orders were given, in military manner, to be accepted and obeyed in strict discipline. In several instances it is known that the change of office came entirely without the officer's foreknowledge. Theirs not to reason why; especially theirs not to claim or refuse.

The death, on July 17, 1928, of the aged Giovanni Giolitti removed, not an obstacle from the path of integral Fascism, but rather an obsolete way-marker, a symbolic reminder of the *parlamentarismo* from which Fascist Italy proudly boasts that she has won her freedom. His public service began almost precisely with the life of United Italy (1862), and included twenty years in the bureaucracy and then forty-two years in Parliament. Though he did not aim at or cause the *parlamentarismo* of these years, it was not an unfair legend of mere

Fascist invention that associated his name with its development—that demagogic degeneration of parliamentary government, corrupted by and corrupting the bureaucracy, the Chamber broken into a kaleidoscopic picture of incoherent fragments, self-seeking personal and semi-feudal clientèles which had no genuine liberalism or conservatism or other political ideal, which sold their votes in changing combinations to the omnipotent political manipulator in return for administrative spoils, and by him were maintained at election time, by administrative pressure, by the political use of the public force, or even, in the desert South, by protected thuggery.

In many respects it was Giolitti's long dictatorship (1903-14), veiled under parliamentary forms that prepared Italy for accepting that of Mussolini. It must even be admitted that Giolitti's conduct in 1921, the year of his last premiership, was one of the important factors in Mussolini's success. Giolitti caused the king's government to accept the alliance of the Fascists, then a mere group of disgusted, ultra-nationalist war veterans, mostly of revolutionary aspirations, who despised bourgeois society, but hated socialists with a still more perfect hatred. In the parliamentary elections of May, 1921, Giolitti admitted a few Fascists to the Government's lists, hoping thus to reinvigorate the Giolittian "Democratic Liberal" forces and enable them to smash the non-coöperating millenium-hoping Socialists and Don Sturzo's Christian Democrats. After the electoral battle the shock troops were to be retired to the oblivion deserved by their governmental inexperience and their unconstitutional violence. Giolitti's electoral strategy failed completely; but he had admitted revolutionary Fascism to political respectability, and by the subsidies of its new allies, Big Business and Feudal Agriculture, it gradually grew to become a military state within the legal state. In this same period, Giolitti acquiesced in the honeycombing of the Italian army with Fascist politics, on the one common point of D'Annunzian nationalism. Thus was unwittingly prepared the situation of October, 1922, when the legal Italian state succumbed to the attack of revolutionary Fascist power because its defenders were Fascist in sympathy—the old story of revolution won by the army going revolutionary, the servant of the state become master.

Still it must be counted to Giolitti for righteousness that, as if in death-bed repentance, his last public appearance was a dignified protest in the Chamber, February 16, 1928, against the adoption of the new parliamentary system outlined below. Declaring that this

scheme "marks the decisive departure of the Fascist régime from the régime directed by the Statuto," he must needs vote against it. He was left unanswered, as if not worth answering—a futile voice from the dead, almost forgotten, pre-Fascist past.

The plan for a body that should supplant the Chamber of Deputies had been more or less in the air for three years. Trial balloons had been sent up from time to time, mostly with reference to the central idea that representation should come from productive associations (trade unions and employers' syndicates) rather than from masses of citizens grouped by their residence in territorial areas. But of equal importance was the effort to realize integral Fascism, to enable the executive to be rid of doctrinaire politics, of demagogic politicians, and indeed of all political opposition. The final plan was agreed upon late in 1927 in the Fascist Grand Council, and was presented for passage (with beat of drum) in the Chamber in February and in the Senate in May. All went according to program, and the new process is to be given its initial operation in the first three months of 1929.

Mussolini's report on this system indicated that Fascism "had never intended to build up a completely autocratic régime or inaugurate a police-state." The ruling class desired still to draw from the people the men necessary to its own constant renewal. But the old idea that Parliament is the dominating organ is now emphatically rejected, as a relic of the outworn dogma of people's sovereignty. It is Fascism's will, on the contrary, that the *state* shall be sovereign. In this state, Parliament is to be one of the fundamental organs, to collaborate with the Government in drafting laws. But its function is to be essentially consultative rather than regulatory. The reconstructed Chamber's *raison d'être* is that it represents the new Italy, completely Fascist and integrally "corporative," one body made up of Fascist corporations.

The corporative Chamber is produced by a threefold process: the productive and social organizations *suggest*, the Fascist Grand Council *selects*, the voters *approve*. There are 400 deputies, but they are selected with reference to one area, the nation at large. These 400 are selected freely by the Fascist party's supreme organ. It is true that there is elaborate provision for nomination of a double number by the national associations of economic character,¹ and also for nomination of candi-

¹ This portion of the list is by law distributed among the several economic interests in the following proportions:

dates by various cultural associations (not designated in the law), to the number of half the deputies to be elected.² But the Grand Council is not restricted to any proportion among these categories; the names are presented to it in alphabetical order; and it is expected to go

				<i>Per</i>		
				<i>Cent</i>	<i>Masters</i>	<i>Men</i>
National Confederation of Agriculture	Employers			12	200	
" " "	Workers			12		550
" " Industry	Employers			10	500	
" " "	Workers			10		6000
" " Commerce	Employers			6	113	
" " "	Workers			6		1000
" " Maritime-Air Transp.	Employers			5	50	
" " " "	Workers			5		100
" " Land Transportation	Employers			4	21	
" " " "	Workers			4		700
" " Banking	Employers			3	50	
" " "	Workers			3		100
" " Artists and Professional Men				20		250
				100		9634

The two columns at the extreme right indicate the approximate numbers of persons who will participate in the nominations, by reason of membership in the general councils of the several confederations (*Corriere della Sera*, Sept. 29, 1928). These bodies meet in Rome, and act by plurality.

² A report from this joint committee was presented December 8, 1928, indicating approximately how these 200 nominees are to be apportioned. A considerable share come from certain categories of persons who cannot be allowed to unionize themselves: 5 from the railroad men, 2 from the postal and telegraph services, 2 from industries dependent on the state, 28 from the other public employees, and 55 from the staffs of public instruction (universities 30, middle schools 15, primary schools 10). Nearly as large a representation is allotted to the nation's war heroes, i.e., 45 to the *Combattenti* and 30 to the *Mutilati*. The remaining 33 are to stand for certain ideal values in the state: 9 from the academies of learned men; 2 from the institutions of fine arts; 3 from Gentile's Fascist Institute of Culture; 2 from the "Dante Alighieri," long famous for its propaganda of irredentism; 8 from the Nationalist propaganda institution; and one representative for each of the following nine ideas, which are mostly embodied in semi-public associations under Fascist guidance: the navy, the colonies, coöperation, savings, corporately organized capital, reclamation of agricultural land, home travel (the Touring Club), athletics (the Olympionic Committee), and "labor improving its leisure" (the *Dopolavoro*).

outside of them entirely, when necessary, to include persons eminent in science, letters, art, politics, and arms.³

After the Grand Council has made up its list of 400, on the third subsequent Sunday comes what the law calls "voting for approval of the list." The voter has in his hand only a ballot bearing the Fascist party emblem, and may vote "Yes" or "No" on the question "Do you approve the list of deputies designated by the Grand Council of Fascism?"

The voting franchise is possessed by (male) Italian citizens of 21 years (and of 18, if married and having children), on condition that they satisfy one of the following qualifications: (1) payment of dues to a union; (2) payment of 100 lire direct taxes or an income of 500 lire from public bonds (state, provincial, or municipal); (3) receipt of stipend from the public; and (4) membership in the clergy of an admitted religion. It is expected that the number of voters will be substantially as heretofore.

The terms of the law contemplate the possibility of the list's rejection, and provide in such a case that in a later election associations counting at least 5,000 inscribed voters may nominate lists. Such lists may not comprise over three-fourths of the number to be elected. The list that obtains the plurality is elected in its entirety. The remaining one-fourth of the Chamber is to be distributed among the other lists in proportion to the number of votes cast, by the application of a list quotient. This contingent system is, however, universally regarded as of no practical significance. The reporter of the bill, De Vito, on concluding the Senate debate, May 12, having been asked about the possibility, replied: "It is not the task of an electoral law to preoccupy itself with such consequences [as if one were imagining revolution]. Many, many years will pass before such an hypothesis assumes reality, because the work of the Government corresponds effectively to the interests of the nation and has the applause of all Italian citizens, and is even envied abroad."

In the adoption of a law regarding the Grand Council one may see the logical conclusion of long previous developments. From the beginning of its career, the Fascist movement, later becoming the Fascist party, must needs have internal organization. The personality

³ This is the sole point at which the bill underwent amendment on its passage through Parliament. The words "and arms" were added in the Chamber, on motion of Deputy Baistrocchi, to the list of qualities of fame which should occasion the Grand Council's going outside of the lists presented.

of its leader needed supplementing in the multifarious tasks of party command and guidance; for they were from the outset both political and military, both propagandist and administrative—all the more when the party seized control of the national government, which made the tasks even more numerous, multifarious, and weighty. An elite of responsible sub-leaders gathered around the *Duce*, with their several specialties to contribute to a unified action. The one-man government required that one man be able positively to rely on other subordinate one-man powers, ordered in a hierarchy for administration, but also fused in a single body for collective, confidential advice. Such has been Mussolini's Grand Council, first of the party, now of the nation, since "totalitarianism" fuses party and nation.

For six years this body has been acquiring consciousness of itself. It was always summoned and presided over by Mussolini, and its personnel was determined by him. No person was a member by virtue of office. No matter was on its agenda save by Mussolini's will. It had no power or will or function except as an enlargement of his personality.⁴ A project of law or administration, even of profoundly constitutional character, made its first appearance in a "report," by Mussolini or a close lieutenant, to the Grand Council. In secret session, as in an English cabinet or an American steering committee, the pros and cons were weighed, the wisdom and tactical expediency, and the present feasibility—all with reference to Fascism's grand design of ruling Italy. After adoption in the Grand Council, a project was ready to go through the several stages of legislative routine: adoption by the ministry, debate and vote in the Chamber and Senate, royal signature, and promulgation. These later stages have all tended to become matters of routine, and the only real deliberation is in the Grand Council.

The notable change of system in late 1928 consists in the adoption into formal law of an institution which had previously existed only in the understandings of the Fascist constitution. There may be some loss of flexibility in this effort at formulation of composition and function, but the change seemed to be necessitated by the parlia-

⁴ One might suppose a parallelism with the French *conseil d'état*, that Napoleonic repository of technical advice in legislation and administration, providing check and assistance to the one-man power. The Italian system has long had a *consiglio di stato* on the French model, its functions being purely juridical, in the field of administrative law. This *gran consiglio* of the 1928 law is, on the contrary, absolutely (*squisitamente*) political.

mentary reform of February-May, 1928. The new Chamber was to be designated to the voters by the Grand Council. As was pointed out in the Senate debate, this supremely important function was devolved upon a body unknown to the law. That defect is now remedied. Following the usual procedure, the Grand Council adopted a report on its own composition and function (September 20, 1928), which report was later permitted to be discussed and adopted by the Senate, on November 16, and the Chamber, on December 8.

The membership of the Grand Council totals some 35 or 40, the uncertainty being due partly to the flexibility of one item, partly to the fact that certain persons qualify under two or more legal titles. All are appointed by royal decree on proposal of the head of the government. The present members are the ministers, i.e., Mussolini (by virtue of six portfolios besides the presidency of the Council), Rocco, Federzoni, Mosconi, Belluzzo, Giuriati, Martelli, Ciano, and the four most important under-secretaries, Giunta, Grandi, Bianchi, and Bottai; the presidents of the Senate (Tittoni) and Chamber (Casertano); the quadrumviri of the March on Rome (Bianchi, Balbo, DeBono, DeVecchi); the head of the national militia (Bazan), which continues the party "squadrist" army of 1922; the secretary (Turati) and eight assistant secretaries and directors of the party; former Fascist ministers of five years' standing (none at present); former secretaries of the party (three, including the famous Farinacci, fiery spokesman of intransigent Fascism in the trying days of the Matteotti crisis of 1924-25); the philosopher Gentile, as president of the National Institute of Culture; Rossoni, as president of the National Confederation of Trade Unions; Benni and Cacciari, as presidents of the national confederations of industrial and agricultural employers; Alfieri as president of the coöperatives; Maraviglia, as head of the autonomous cultural associations; Ricci, as president of the *Balilla* (Fascist boy scout pre-militia training body); and Cristini, as president of the Special Tribunal for Defense of the State. In addition, Enrico Corradini, the veteran Nationalist journalist, is included as one of a category, unlimited in number, whom the head of the government may call in "for a determined time, men well deserving of the nation and of the Fascist revolution, or particularly competent in matters submitted."

Service in this body is gratuitous, but is privileged: no member may be arrested or subjected to police disciplinary measures without the consent of the Grand Council itself. The meetings are secret, and

its decisions are valid, whatever the number of members present. The *Duce's* control, in the sense of a veto power, is not mentioned in the law, but is implicit in all the provisions for the Council's make-up and conduct. He convokes the Council when he deems it necessary, fixes its agenda, and presides.

The functions are summarized in Arts. 7 and 8 of the law as follows: "The Grand Council decides on (1) the list of deputies (law of March 17, 1928), (2) the constitution, regulation, and policies of the National Fascist party; and (3) appointment and dismissal of secretaries and directors of the party." It must always be consulted on questions of constitutional character, such as: proposals of law touching the succession to the throne, the king's powers and prerogatives, the composition and function of the Grand Council and of the Senate and Chamber, the naming and prerogatives of the head of the government; also the executive's power of issuing legal rules and trade-union and corporative regulations, relations between the state and the Catholic Church, international treaties that involve territorial changes, the state and its colonies, and renunciation or acquisition of territory. The Grand Council makes and keeps a list of names to present to the crown in case of vacancies, for appointment of head of the government or ministers. The Grand Council is "the supreme organ which coordinates all the activities of the régime that arose out of the revolution of October, 1922. It has deliberative functions in all cases fixed by law, and also gives its opinion on every other question of national interest, political, economic, or social, submitted to it by the king's government."

The outstanding innovation is not comprehensiveness of function, nor is it unity; these qualities were always implicit in all actions of the Grand Council as the informal staff meeting of Mussolini's intimate advisers and lieutenants, the whole régime unified in him and his aristocracy of Fascist fellow-servants. What is new is the supposed provision for continuity. If Mussolini were to be suddenly carried off, the national disaster is to be mitigated by a clear, institutional understanding among his lieutenants as to the succession and the hierarchical order in that succession; the corporation (Fascist Italy) is not to be dissolved or embarrassed by loss of its superintendent. The observer may doubt whether this provision is practicable. The ambition of a designated successor is a danger which no amount of secrecy or discipline can conjure away. Mussolini has said repeatedly that his successor is not yet born.

In all this provision for ministerial succession and treaty-making, what of the king, who by the constitution should choose his own ministers and conduct foreign relations? Fascist loyalty to the king has been proclaimed loudly, especially in the late months of 1928; all governmental power is declared to be his and exercised in his name. But the real answer has been indicated clearly enough by Mussolini on repeated occasions: the Albertine constitution of Sardinia-Piedmont is dated 1848, and has no power to limit the statesmen of Fascist Italy.

The king's loyalty to legal form and constitutional theory may lead him still to accept the situation. But if he continues thus to efface himself, if notwithstanding his oath to maintain the Statuto he makes himself a mere symbol, a flag that blows with the wind—whether it be the conservative Cavourian wind of Sonnino (1910), the Left-friendly parliamentary-dictatorship wind of Giolitti (1903–1914), the parliamentary-anarchy wind of Nitti (1919), or the self-willed autocratic whirlwind of Mussolini (1922–28), who even prepares to designate his successor as premier in an unknown future—to many loyal souls, enemies as well as friends of Fascism, the Statuto seems plainly to have ceased to exist; the king is not a constitutional monarch but a Merovingian symbol of royalty, and the Mayor of the Palace is in this recent law declaring the new constitution of Fascist Italy.

The whimsical or cynical may suggest that one sign of the normalization of the Fascist régime, at least of its definitive acceptance as the government of the Italian state, is the now manifest hopelessness of the régime's finding a solution of the ancient problem of Roman Church and Italian state.

The Fascist absorption (1923) of the pro-clerical Nationalist party and program, and especially the growing influence of Rocco and Federzoni (ministers of justice and the colonies), had seemed to justify high hopes that at last a régime had been established with which the Roman Church could with good grace and dignity make peace. The first years of Fascist rule were punctuated frequently by state courtesies to the Church, reciprocated in kind, all in striking contrast with the anti-clericalism of all Italian politics since the breach—lamented by both sides—of the Roman Porta Pia on September 20, 1870.

But if the Fascist state in 1927–28 finds its sign in "intransigence," mainly with reference to practices of the liberal constitution, intransigent absolutism is no Fascist invention; it is a game in which

the Roman Church has been expert, not for months but for centuries. One thing is sure; the Pope will not accept a position, under Mussolini's patronage, as chaplain of even a pro-clerical Italian state; and by the same token Mussolini will not accept a position under Pius XI's patronage as chamberlain of the papal curia. If the Church is ancient, Fascism is full of youth. Fascism also is a religion, and its adepts are full of faith and fervor.

From time to time the press announces that at last, as the result of Father Tacchi-Venturi's negotiations, Mussolini is about to add the remarkable feather to his cap of a definitive solution of the Roman Question; e.g., there is to be a negotiated settlement in place of the Italian state statute of papal guarantees, which is theoretically repealable. A concession of territory in the Leonine City is rumored; or proprietorship is to be substituted for mere possession of the Vatican palace, etc., etc. But these are all mere hints and hopes; the definitive solution has yet to arrive.

On the whole, the year 1928 saw relations between church and state grow worse rather than better. The point most sharply discussed was education, claimed by each party to the dispute as its indispensable monopoly. In May there rose a sharp controversy regarding the Catholic boy scouts, an organization which had been continuing to function in the smaller towns. As this seemed an infringement on the Fascist monopoly of the training of youth (the *Balilla* organization), the government took drastic steps to end the anomaly. After severe interchanges in the Fascist and Vatican press, a *modus vivendi* was reached whereby the clergy were allowed to function in the field of religious instruction but physical and cultural training was to be wholly under Fascist auspices. About the same time there was a sharp rebuke, delivered on clerical authority, to the philo-Fascist political group known as National Catholics, indignantly reasserting that the Church is still suffering oppression from the civil power, oppression that is intolerable to the faithful.

How can two absolutes be in relation? The Fascist absolutism sincerely desires good relations; but here is a point in which it cannot act *fascisticamente* (in a hurry). The Church absolutism has its own objectives to pursue; but it also is in no hurry. Having waited nearly sixty years, and now finding the state ready to assume a conciliatory attitude, the Church can afford to wait. The end is not yet.

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The Spanish Directory and the Constitution. It is one of the surprising things in contemporary political science that at a time when what is known as "the pragmatic revolt in politics" is an outstanding phenomenon, and when lavish attention is being bestowed upon the histrionic adventures of Italy into the fields of political realism, the experiments of the Spanish Directory tend to be passed over without serious investigation. Spain has been treated as though her experiment were only a futile or less meaningful, slavish imitation of the work of *Il Duce*, as though the Iberian peninsula were witnessing only *in parvo* the monumental experiments of Fascism. This easy dismissal of the work of the Directory in Spain may be comforting in its simplicity, but it is a distinct over-simplification and an attempt to argue from analogy where the basic and essential elements of a similar situation are lacking. Merely the fact of dictatorship, merely the supposed association of an armed partisan force with the dictator in power, merely the fact of the abrogation of public liberties in each instance have been taken to constitute the essential elements of comparison and identification. The less dramatic character of the events in Spain has tended to obscure the far-reaching differences between the régimes centering in Rome and Madrid.

Apologists for the old régime overthrown by the Spanish Directory are wont to attribute the constitutional evils of Spain to the fact of the army's participation in politics, believing that in the constitutional history of the nineteenth century it was parliamentarism, and parliamentarism alone, that brought Spain from a mediaeval absolutism into whatever political modernity she enjoyed before 1923.¹ On the other hand, the vindicators of the Directory and its works have pointed out that in the nineteenth-century constitutional development of Spain it was in reality the army, acting as the vigilant guardian of the nation's welfare, that at appropriate moments enlightened the sovereign through its *pronunciamientos* and brought about the requisite concessions of popular liberties.²

¹ Cf. Conde de Romanones, *Las Responsabilidades Politicas del Antiguo Regimen, 1875-1923*, especially Chaps. V and VII and Epilogue. "It may be affirmed that the parliamentary institutions in our country in no wise prejudiced its development nor furnished an obstacle to governmental programs. . . . The discussions in the Cortes served to awaken popular interest in political problems and inform the public about them. Furthermore, Parliament in Spain, as elsewhere, has been the sole check on royal authority and that of the Government." (pp. 353-354).

² Cf. Pedro Sainz Rodriguez, "Interpretacion Historica de la España Con-

Both of these ready-made, self-vindicating explanations contain a modicum of truth, but they do not in themselves tell the whole story. There can be no gainsaying the fact that throughout the major part of the nineteenth century the army, having been the original instrument of liberation of the nation from the Napoleonic yoke, played an active part in Spanish politics. The legacy of liberation was a taste for power; for sixty years, from 1814 to 1874, the army was the determining factor in the political evolution of Spain. In default of an active public opinion or an enlightened, or at least literate, electorate, the army, being more truly representative of every class in the nation, made and unmade governments. Basically, it was this fact, added to the absence of a respectably large bourgeoisie, that made the abortive attempt to implant "republicanism by resignation" in the third quarter of the nineteenth century a dismal failure. The army was always royalist to the core, and since there existed no other organized support for a régime than the army, republicanism was foredoomed to be a sterile and fruitless adventure. In the end, after a dilettante acquaintanceship with the republic, Spain was more than willing to accept the monarchy as the traditional stabilizer of society; hence the Restoration.

The period from the Restoration to the Directory—almost exactly half a century—witnessed an effort to implant, by imitation, the parliamentary system. As an antidote to pretorianism, Canovas del Castillo attempted to utilize local bossism—*caciquismo*, as it was known in Spain—as the buttress for parliamentary institutions. The attempt was successful in so far as it eliminated the army from politics and relegated it to its place as the ministerial servant of the crown.³ The price Spain paid for the exaltation of bossism into a cardinal principle of statecraft was, of course, notorious maladministration and a vicious system of both spoils and rotation in office. It is unnecessary to do more than recall the Pacto del Pardo—the rotation agreement reached by Spanish politicians at the death of Alfonso XII

temporanea," *Revista de las Espanas*, Vol. III, pp. 251-3 (June-July, 1928), and Maurice Legendre, "Die Spanische Krise in Ihren Augenblicklichen Gestalt," *Europäische Revue*, Vol. I, Pt. I, pp. 102-103 (1925).

³ Rigid centralization, after the Restoration, made it possible to nip in the bud the conspiracies which had been inveterate in the preceding fifty years of Spanish politics. That, at least, stands to the credit of the constitutional régime. Cf. R. T. Desmond, "The Régime in Spain," *Foreign Affairs*, Vol. 2, pp. 458-459 (March 15, 1924).

—to note that with such a foundation parliamentarism, in its genuine sense, was made *a priori* impossible. Only the veneer of the parliamentary system existed; the Cortes was hardly representative, in view of the manufacturing of electoral majorities by whatever factions were in power when the electoral day arrived. In performance, the Cortes engaged in endless disputations and masterly inactivity. In short, after a half-century of pretorianism, another half-century of Byzantinism was found to offer but little gain.⁴

The immediate causes of the downfall of the old régime need not be considered in detail. In the general *malaise* that settled down upon western Europe after the World War, Spain was not spared. Though she had been neutral, her internal strength had been wasted on the unpopular Moroccan adventure, and the collapse of the market which the Allied countries had provided during the period of hostilities removed any artificial buoyancy from the steadily sinking ship of state. While the parliamentarians at Madrid discussed in impotence, unrest, strikes, violence were the order of the day throughout Spain, and Catalan separatism grew to dangerous proportions. No shifting of ministries, no reshuffling of the parliamentary deck offered any prospect of relief from these discreditable conditions. *Caciquismo* had been weighed in the balance of experience and found wanting. Under the circumstances, there appeared to be no alternative save to fall back on the traditional support of monarchical authority, i.e., the army. That the army had been aware of the situation and its growing evils ever since June, 1917, is now quite clear. The forming of military juntas which reëntered politics was symptomatic of the situation. In consequence, when the inciting moment came, at the darkest hour in the Moroccan war, the blow was struck and the Directory came into power. That it was accepted by all classes of society except the parliamentarians and a rump of the intelligentsia is not without significance. Save for these, the régime of the Directory was virtually unopposed.

The first year of the new order was essentially negative, destructive. It was largely a period of dissolution and uprooting, in which the extirpation of practices and institutions widely believed to be responsible for Spain's situation took place. The Cortes, dissolved immediately after the Riverist *coup d'état*, disappeared from the scene. When the constitutional period of three months during which a new legislative body was supposed to be convoked passed without royal

⁴ Albert Mousset, *L'Espagne dans la Politique Mondiale*, pp. 16-18.

action, it was realized that for all practical purposes the constitution of 1876 was juridically dead. In any event, neither the crown nor the army—nor indeed the Church, which was, and continues to be, the moral mainstay of the dictatorship—lifted a finger in its behalf.⁵ But the destruction did not stop there. It extended to the local governmental institutions. Both the municipal councils and the *Mancomunidad* of the region embracing Barcelona—an inter-provincial aggregation—were unceremoniously dissolved, and for a time nothing but military government, systematically organized throughout the country, functioned. It was necessary, in the mind of the Directory, to destroy *caciquismo* thoroughly and root out institutions that buttressed the old régime if substantial progress was to be made in the rebuilding of the constitutional structure of Spain. Hence, while the Moroccan war was gradually liquidated and law and order were restored in Catalonia—not without summary executions by courts martial—the constitutional life of the country was in abeyance.

Within six months of its assumption of power, the Directory began its “constructive” reforms in the field of municipal government, and the *ayuntamientos* received, by the Municipal Statute of March 8, 1924, a new basic pattern of organization which introduced the principle of corporative representation as the essence of local self-government. A year later, on March 20, 1925, the provincial governments underwent overhauling, and the Provincial Statute replaced the old assemblies by new bodies made up of representatives of organized corporate interests within the provinces; while the provinces were allowed to combine into regional confederations for the purpose of carrying out certain undertakings, such as the establishment of hydro-electric plants and power systems along the various river basins. Thus, by “renovating” the life of the country from its lowest units upwards, it was found possible to open the way for regional economic self-determination and to kill the separatist movement by cutting the ground from under its feet. Although military force had been used to repress the Catalan separatist and syndicalist movement, and the *Mancomunidad*, whose charter had been extorted by the Catalonians from the old Cortes, was done away with, the concession of the right of inter-provincial coöperation along economic lines proved a fruitful

⁵ When the Speakers of the Chamber of Deputies and Senate appeared before King Alfonso on December 17, 1923, to inform him that the constitutional period was lapsing, they were dismissed from office by the monarch at the instigation of the dictator.

step in quieting regional demands and inaugurated the principle of both political and economic decentralization as a remedy for the marked over-centralization of the older régime.

Two years after taking office, the Directory ceased to be military; on December 3, 1925, it became a civil dictatorship. Gradually the military delegates in the provinces were withdrawn and civil institutions—without constitutional guarantees, to be sure—were permitted to function independently. A year later, on the occasion of the plebiscite of approval which the Directory demanded, it was announced that the next stage in the institutional rehabilitation of Spain would be the summoning of a consultative national assembly as an advisory, independent body capable of undertaking systematic fact-finding and reporting to the Directory the results of its inquiries.⁶ Being purely consultative, and therefore non-political, it was anticipated that the body would prove of distinct usefulness in grappling with the basic economic and legal problems affecting the country. It was not, however, until September 12, 1927, on the eve of the fourth anniversary of the Riverist *coup* that the royal decree-law creating the body was issued. On October 10, 1927, the Assembly convened under the presidency of José Yanguas, ex-minister of state and of foreign affairs. The nation thus came into possession of a national representative body for the first time since the dissolution of the old Cortes.

The Spanish National Assembly is in the main *sui generis*, without prototype or predecessor. In post-war Europe it is the first national representative body to have been chosen on the corporate group-interest representation principle exclusively.⁷ It is not comparable in

⁶ "In convoking the Assembly it was not thought, as some believed, to substitute it for the ancient Cortes, but to give the country an organ which, without having the essential characteristics common to every parliament, to legislate and share sovereign power, should collaborate, independently of the Executive Power, in the work of governing, drawing up general legislation in complete fashion which should in its proper time be submitted to the Legislative Power for approval. Other tasks entrusted to the Assembly include surveying the activities of the government, studying projects and proposals relative thereto, proposing economies in public expenditure, and inspecting the functioning of given services or organisms of the state, provinces, or municipalities." Manuel Raventos y Noguer, "La Asamblea Nacional Española," *Revue de Droit International* (Geneva), Vol. 5, pp. 321-328 (1927).

⁷ Under the royal decree-law of September 12, 1927, the Assembly is composed of 400 members, selected for a three-year term, subject to certain safeguards. It represents, not territorial areas, but divers interests of the national

any way to the unicameral assemblies of a more or less constituent character which have functioned in other countries; nor is it exclusively an economic parliament, such as the *Reichswirtschaftsrat* was intended to be under the Weimar constitution. It is somewhat akin to the Grand Council of Fascist Italy, as that institution has been created under laws recently decreed by the Italian dictator. Having, however, preceded that institution by at least a year, it can claim both precedence and originality in its internal constitution.

The Assembly convenes annually in October and remains in session, fractionally⁸ or as a whole, until the end of July, barring secular or religious holidays. In practice, the body has conducted its sectional work for the first three weeks of each month and has held its plenary

life—scientific, economic, political, and financial. Apart from a sprinkling of outstanding figures of a non-political character, classed as “personal values,” its membership is composed of five main groups: (1) representatives of the municipalities of each province; (2) representatives of the provinces; (3) provincial representatives of the Patriotic Union—the only organized group of followers of the Directory, though not officially a political party; (4) representatives of the state, i.e., heads of the different branches of the administration, the higher clergy, the higher officers of the army, navy, and judiciary, together with representatives of various advisory boards; and (5) representatives of culture, production, labor, and commerce, designated by the government from among the members of the different agricultural, commercial, scientific, educational, economic, trade, and professional bodies, as well as from the ranks of farmers, business men, and industrialists. The first two categories are elected by the deputations of the *ayuntamientos* and provinces, respectively, from among their own membership. It will be recalled that these are now corporately representative bodies. Ministers of the crown cannot be members, although they participate freely in the Assembly’s deliberations. Women as well as men belong to the Assembly, this being an unprecedented provision in Spain. Their presence clearly reveals that the stabilizing influences of religious conservatism were sought for by the Directory in deciding on the composition of the Assembly.

⁸ The real work of the Assembly is done in eighteen sections, containing at least eighteen members apiece, as follows: (1) Drafts of Constitutional Laws; (2) Proposals and Reports on Treaties, Agreements, and Concordats with other Countries or Powers; (3) National Defense; (4) Tariff Policy; (5) Codification of Civil, Penal, and Mercantile Law; (6) Laws of a Political Character; (7) The Régime of Property and its Use; (8) Tax System; (9) Production and Commerce; (10) Education and Instruction; (11) Examination and Classification of Credits . . . whose origin antedated September 13, 1923; (12) Ordinary and Extraordinary Loans; (13) General Plans for Public Works; (14) Social, Sanitary, and Benevolent Work; (15) Administrative Reorganization and State Accounting Legislation; (16) Land, Sea, and Air Transport and Communications; (17) Extraordinary Pardons; (18) Political Responsibilities.

sessions—not exceeding four—during the last week. The Assembly being a non-political body, the government is not given the right to postpone or suspend its sessions (as was the common fate of the Cortes under the old régime) or to expel its members. It may not, however, talk itself to death, as there is a most rigid limitation of debate; no speech of more than twenty minutes' duration is permitted, nor a rebuttal of over ten minutes. In no other deliberative assembly in modern times has so rigid a restriction been found necessary.

With this consultative body to assist it, the Directory has, during the past year, undertaken the basic task of constitutional reconstruction. Speculation was rife during the work of the First Section of the Assembly, i.e., that intrusted with constitutional projects, as to the nature of the anticipated reform. When the official draft on which deliberation has centered became available,⁹ it was seen to depart far less from the institutions under which pre-Riverist Spain functioned than had been generally anticipated. In lieu of the wholesale reconstruction of national institutions attempted in Italy, the proposals of the Directory have altered the pre-existing scheme of government as little as possible, while still carrying out the principal idea of strengthening royal and executive power. Hence, instead of planning an entirely new constitution, the Directory proposes only a "reform" of Titles II, III, IV, V, and VI of the constitution of 1876. The reform, as might be expected, touches primarily the question of the legislative system and the relations of the public powers, resembling in this respect the constitutional laws of France dating from the time when her National Assembly was called upon to reconstruct the broken edifice of Napoleonic authority.

Foremost among the changes proposed is the substitution for the sterile bicameralism of the old régime of a single-chambered Cortes, with a five-year term, which will have a virtual monopoly of genuine legislative power. The Cortes, or, more properly speaking, the Chamber of Deputies, is to be a compromise between a purely elective body and the present indirectly elected Assembly with its nominated group representatives. Three hundred of its members are to be elected directly, one hundred and fifty are to be chosen by the various social groups, and the residual element, undefined in number, will be royal appointees. In many respects, therefore, the promised Cortes is to

⁹ Cf. M. W. Graham, "The New Spanish Constitution," *Current History*, Vol. xxviii, pp. 644-647 (July, 1928), for the text of the proposals and a brief commentary.

resemble the present Assembly. Its corporative character, its sessions and procedure, its legislative and investigatory functions are to be much the same; but it will possess, in addition, powers of impeachment and interpellation closely akin to those exercised by the defunct parliament. A new feature in the draft is the referendum which may be exercised on special or urgent occasions at the discretion of the king. This is apparently intended to safeguard future legislation against the potential obstructiveness of the new Cortes.

Next in importance is the proposed Council of the Kingdom, "a representative, consultative, and jurisdictional organ," largely appointive, and, like the Cortes, representative of corporate interests.¹⁰ This body is intended to perform a variety of functions, partly those of an upper chamber, partly those of a constitutional court, as regards legislation. In addition, it will perform advisory and censorial functions regarding foreign relations, economic matters, national defense, judicial administration, and the selection of a premier. Finally, it is to be a high court for impeachment cases, a supreme administrative tribunal, and a tribunal of conflicts, all in one. Here is presented an amazing fusion of governmental powers and functions totally repudiating the traditional doctrines of both separation and union of powers.

In the proposed constitutional reconstruction, executive authority has not suffered. The buttressing of the position of the monarch as the possessor of the moderative power, the amplifying of the sphere of jurisdiction of the ministry, the complete disavowance of the cabinet from the Cortes, and the provision that a newly selected premier shall, on general principles, have a five-year mandate are all indicative of the deliberate effort to break with the parliamentary system of the old régime and to avoid, at all hazards, the dissipation of executive authority by excessive rotation in office. Admittedly, the final definition of the relationships between the cabinet and the legislative body is indeterminate and awaits a special law;¹¹ but the basic principles laid down are such as to forecast the creation of a more vigorous and independent, a largely irresponsible, executive.¹²

¹⁰ Eight elective members out of a total membership of forty-eight will have ten-year terms.

¹¹ Article 37 of the draft constitution contemplates this.

¹² "Who can doubt," asks a French writer, "that when the dictatorship shall have been stabilized and the political rôle of the corporative groups shall prove more important than their social rôle, the royal government, enjoying a practically absolute power, will know how to avoid having the aspirations of the working classes run contrary to its designs? It would be infantile to believe

All in all, the constitutional project of the Spanish Directory has much that is Bismarckian about it. It represents the constitutional ideology of a régime of *sangre y hierro*; it represents also an endeavor, in an era of economic transition, to find a new basis for the representation of the major economic interests in Spanish life in strict liaison with the government, as was largely the case in the Bismarckian era in imperial Germany.¹³ The Cortes, over which the monarch will have the untrammelled power of dissolution, closely resembles the imperial Reichstag in its legislative capacity and its censorial impotence; the Council of the Kingdom has most of the legal attributes of the former Bundesrat; finally, the sovereign and his ministers are given a fresh lease of authority and almost unlimited war and treaty-making power. That these attributes were not without their utility in the modernizing of imperial Germany may be readily admitted; that they contained in themselves grave dangers stands revealed as the verdict of history.

It is altogether improbable that the reforms proposed will be enacted overnight. Even under a dictatorship, a propitious hour must be sought for every move, however adroit. The recent pronouncements of the Dictator on the fifth anniversary of his *coup* indicate that five more years may be necessary to complete the constitutional transition. While the Assembly still has two more years of life, its term can be prolonged by the king if necessary; this was envisaged in the original royal decree. The present phase of the directorial régime is admittedly an interim one, and the Dictator appears to be quite willing, if necessary, to await the appropriate hour of political high tide to complete his constitutional piloting. Whether under a corporative constitution which will largely nullify traditionally conceived public liberties—as the Directory has in fact continually nullified them—Spain will in due season be enabled to steer a median course between the Scylla of pretorianism and the Charybdis of parliamentary

the contrary. The corporative state has not been invented, save to subject Spain to disciplines whose aim is to rid her of the 'democratic virus.' Cf. "La nouvelle constitution espagnole," *L'Europe Nouvelle*, 11th year, No. 539 (June 9, 1928), pp. 796-798.

¹³ Like Bismarck, and unlike Mussolini, Primo de Rivera has not attempted to make a clean sweep of pre-existing national institutions, but has added or replaced institutionally the minimum compatible with his constitutional plans, and has allowed local and regional autonomy to have free course.

impotence will depend largely on the moderation and sagacity of the monarch at the bridge and the Dictator at the helm of the ship of state.

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The Soviet System of Federalism. The system of soviet federation established by the constitution of 1923 represents a peculiar inversion of the federative idea. The framers of this instrument of government were faced with the solution of a problem of a complex and conflicting nature. The creators of the new Russian government, the leaders of the Communist party, desired to secure, on the one hand, the establishment of the rule of the proletariat; they hoped to build up a government that should develop into "a complete unity of workingmen of various nations"¹ in "one centralized democratic republic."² On the other hand, the former Russian Empire had been made up of numerous nationalities. These distinct nationalities remained under the new Soviet régime and were insistent in their claims to self-government. The creators of the Soviet constitution were, therefore, confronted with the reconciliation of the principle of the rule of the proletariat with the principle of the freedom and self-determination of nationalities. In terms of governmental structure, they attempted to fit together these two incompatible political ideas: the practice of absolutism with the idea of federalism. The bolshevist oligarchs, rabid adepts of centralization, were obliged to acknowledge the rights of the nationalities to a certain amount of independence within the soviet state. The resulting system of soviet federation was written into the constitution of the Union of Soviet Socialist Republics (USSR), which was approved by the Central Executive Committee of the Union on July 3, 1923, and which was ratified by the Second Congress of Soviets in January of the next year.

It is the purpose of this paper to examine the soviet system of federalism to discover the results of this attempt at the reconciliation of absolutism and self-determination. First of all, I shall describe the federal organization of the Union of Soviet Socialist Republics. Then I shall point out how administrative centralization and absolutist

¹ Lenin, *Complete Works*, Vol. XIX, p. 268.

² Lenin, *State and Revolution* (Petrograd, 1918), p. 68.

practice have rendered worthless the constitutional guarantees of self-government to the various nationalities.

The Union of Socialist Soviet Republics (USSR) is a federation and is today composed of six component soviet republics. At the time of the formation of the Union, four member states were included in it: (1) the Russian Socialist Federative Soviet Republic (RSFSR); (2) the Ukrainian Socialist Soviet Republic (USSR); (3) the White-Russian Soviet Socialist Republic (W-R SSR); and (4) the Transcaucasian Socialist Federative Soviet Republic (TSFSR). Since then two more members have entered the Union: the Uzbek and the Turkmen³ soviet republics.

The federal idea is further carried out in the organization of the member states of the union. Only two of the component states of the USSR (the White-Russian and the Turkmen republics) are not federations. The RSFSR consisted in 1925 of nine autonomous republics and fourteen autonomous regions. The TSFSR embraces three states: Azerbeidjan, Georgia, and Armenia. The Ukrainian republic contains the autonomous republic of Moldavia. The Uzbek republic likewise has one autonomous region. Thus the Union of Soviet Socialist Republics is a highly complex federal state, consisting of many states and autonomous regions.

The federal idea is further expressed in the representation of the separate states in the central federative political bodies that play the leading rôle in the political life of the Union. The supreme organ of the soviet government is the General Congress of Soviets elected by all the soviets of the USSR. The town soviets elect one representative for 25,000 electors, while the provincial soviets elect one representative for every 125,000.⁴ Thus a town elector equals in voting strength five agrarian electors. This General Congress of Soviets meets usually only once a year, and then for a comparatively short time. Extraordinary sessions may be called, but they are of still shorter duration.

The normal permanent representative body is the Central Executive Committee of the USSR, which consists of two sections—the Council of the Union and the Council of Nationalities.⁵ The Council of the Union is elected by the General Congress of Soviets at its ordinary annual session. It consists of 414 members,⁶ elected in proportion to the population of the various republics. The RSFSR has three times as

³ Middle Asia.

⁴ Const., Arts. 8 and 9.

⁵ Const., Art. 13.

⁶ At the present time the Council of the Union has a few more members.

many inhabitants as all the other republics put together, and consequently a great majority of the members of the Council of the Union are representatives of that division of the nation.

The Council of Nationalities, which is supposed to defend the rights of the various soviet republics, consists of the representatives of the member republics of the USSR and of the deputies of the autonomous republics. Each member republic sends five representatives, and each autonomous state sends one deputy. The members of the Council of Nationalities are admitted to office only upon the approval of the General Congress of Soviets. Since there are many more autonomous republics within the RSFSR than within all the other members of the Union combined, the representatives of the RSFSR control a majority of the votes in the Council of Nationalities.

The Council of the Union and the Council of Nationalities resemble, to a certain slight degree, two houses of a legislature. Legislation is supposed to be approved by both councils. In case of disagreement between the two on any legislative or administrative question, a special mixed conciliatory committee is established. This committee works out a text of the law or decree acceptable to both councils. If this conciliatory committee is unable to reach an agreement, the controversy is submitted to the united general assembly, consisting of both the Council of the Union and the Council of Nationalities. If in the general assembly a majority of the members of either council votes against the proposed bill, it must be laid before the session of the General Congress of Soviets for a final solution in case either council demands it.

Not only are the member states of the Union represented in the political organs of the federation, but they are apparently granted by the constitution ample political rights and privileges. Article 3 of the constitution declares that member republics of the Union are sovereign states and can independently exercise their sovereign rights so far as these do not conflict with other articles of the constitution. The separate republics have always "the right freely to leave the Union;" this right is solemnly acknowledged by Article 4 of the constitution.⁷ Finally, the borders of the separate republics can be changed, restricted, or abolished only with the consent of all the member republics of the Union.

⁷ P. Gronska, "Can the USSR be a Subject of International Law?," *Recollections of Soviet Russia* (Paris, 1924), pp. 103-104.

This federal system does not, however, provide actual security for the nationalities within the Union. Membership in the Council of the Union is apportioned according to the population of the various republics; consequently, the RSFSR, with three-fourths of the total population, has a great majority of the membership of this council and can outvote all the other republics combined. Nor does the Council of Nationalities adequately defend the rights of the various soviet republics. Here, too, the RSFSR, because of its large number of autonomous republics, has more than half of the seats. The Council of Nationalities, it must be added, is not entirely equivalent to the upper chamber of other federal governments; if the Council of Nationalities disagrees with the measures approved by the Council of the Union, the questions are submitted for decision to the General Congress of Soviets, a large majority of which is controlled by a single member of the Union, the RSFSR.

The division of powers between the Union of Soviet Socialist Republics and the component states of the Union further indicates the small sphere of activity permitted to the various republics and demonstrates the lack of self-determination on the part of the members of the federation. Article I of the Union constitution enumerates the powers that are within the competence of the supreme organs of the Union. The powers granted to the federal government cover the following important branches of legislation and administration:

1. The whole system of foreign policy; international relations; treaties; declaration of war; and signing of peace.
2. Internal and foreign loans; complete control of foreign trade; home trade policy; the general plan of state economic activities; federal taxes; and the Union budget.
3. The organization and control of the army and navy of the USSR.
4. Union land policy; the system of exploitation of mines, forests, and waters; and legislation on migration.
5. Legislation concerning the organization of and the procedure in the courts; and legislation concerning civil and penal law.
6. Labor legislation and general policy; public education; and public health.
7. System of weights and measures; and Union statistics.
8. Legislation concerning citizenship in the Union and concerning foreigners in the USSR.
9. Amnesty.

This long enumeration of the affairs which are placed within the competence of the Union proves that all the most vital and important branches of legislation and administration belong to the central federal institutions. The separate republics and nationalities are permitted to handle only matters of secondary importance and local interest.

To evaluate accurately the position of the nationalities in the soviet federal system, we must examine with special care the administrative structure of the government. The most characteristic peculiarity of the soviet system of government is its complete union of legislative and administrative powers. The soviet constitution, in principle denies the idea of any separation of powers; it likewise denies the prevalence of representative legislative bodies over all other organs of the state. The English theory of the supremacy of Parliament is particularly foreign to the soviet régime. One of the soviet writers, Professor Hoiehbarg, outlines what he calls the difference between the bourgeois and the proletarian conception of the state. He says: "Legislation is the temple of a bourgeois state, and law is its idol; the temple of proletariat and socialism is administration, and labor is its religion."⁸ The soviet state organs are primarily organs of administration; legislative functions play a second rate rôle. The atmosphere of sovietism is that of administration. In our analysis of the soviet system of federalism, we must consequently pay close attention to the administrative structure and powers of the soviet government.

While the two councils in the Central Executive Committee perform both legislative and administrative functions, they are not permanent bodies. There are other organs of legislation⁹ and administration which are in rivalry with, and which exercise greater powers than, these two councils. The two most important of these institutions established by the constitution are the Board, or "Praesidium," of the Central Executive Committee and the Union Council of the Commissars of the People. They do not possess the federal character of the General Congress of Soviets or of the two councils of the Central Executive Committee. They are not made up of representatives of the various member republics. Rather, they form a part of the system of centralization; they have supreme power in the soviet state and represent the interests of the Communist party, which is the real ruler of modern Russia.

The Board of the Central Executive Committee is "the supreme legislative and executive organ of the Union"¹⁰ when both chambers of the Central Executive Committee are not in session. It consists of

⁸ See N. Timascheff, *Grundzuge des Sowjetrussischen Staatsrechts* (Berlin, 1925), p. 141.

⁹ B. Mirkine-Guetzévitch, *La Théorie Générale de l'État soviétique* (Paris, 1928), p. 81.

¹⁰ Const., Art. 29.

twenty-one members: seven members of the Board of the Council of the Union, seven members of the Board of the Council of Nationalities, and seven members specially elected by the Central Executive Committee. Such a method of election of the members of the Board of the Central Executive Committee leads to a majority control by the representatives of the RSFSR. This Board shares its supreme power with the Union Council of the Commissars of the People. This latter institution is the federal cabinet of ministers of the Union; it has not only executive but legislative powers as well.¹¹

The Board of the Central Executive Committee is the most powerful political institution in the whole system of the soviet state. It possesses the supreme controlling power of supervision over the execution of the federal constitution and of the decisions of the General Congress of Soviets and of the Central Executive Committee.¹² This Board has the right to suspend and to abolish decisions of the Union Council of the Commissars of the People and of the commissars of the Union. Its suspending and over-ruling power extends as well to the decisions of the local councils of the commissars of the people in the separate member republics of the Union and over decisions of the representative bodies of the separate republics over the central executive committees and the local congresses of soviets.¹³ Thus its supreme power spreads not only over the federal institutions but also over all the local institutions of the component states of the federation. All the soviet governmental organs, local as well as federal, can be entirely paralyzed by the suspending and vetoing powers of this Board. If the actions of the Board are approved by the Central Executive Committee (and this committee is controlled by the RSFSR), the separate member republics cannot enter any complaint against the Board. Under such conditions, the most essential foundation of federalism—a certain degree of independence for the members of the federation in legislation and administration, granted them by the constitution—ceases to exist.

The power of the Board to suspend or reject the decisions of local bodies entirely nullifies the grant of sovereignty to the member republics by the constitution. If every decision of the state organs of the various republics can be set aside by the central government, then

¹¹ Const., Arts. 37 and 38. *Reikhel, USSR, Ocherki Konstitutsionnykh Vzymootnosheniy Sovetskikh Respublic* (Moscow, 1928), Vol. I, pp. 78–82.

¹² Const., Art. 30.

¹³ Const., Arts. 31 and 32.

obviously the decision of a separate member of the federation to leave the Union can be vetoed by the Central Executive Committee and its Board. It becomes quite clear that the right of secession guaranteed by Article 3 of the constitution and the obligation of the central government to protect the sovereignty of the separate republics are rights and obligations which do not exist in reality.

The permanent and vigilant control of the Board, and the entire subordination of the local soviet institutions to the will of the Board, reduces the separate member republics of the Union to the status of mere territorial divisions of a centralized, non-federal state. The various soviet republics of the USSR, in reality, present a closer resemblance to the Russian provinces of the czarist régime than to members of a federation. Behind this sumptuous façade of federalism is concealed the true soviet system; the real power of government is concentrated in the hands of the Central Executive Committee of the Union and of its Board. These are the two institutions through which the dictatorship of the Communist party in the soviet federation is realized.

The detailed administration of the various state activities likewise comes within the purview of the central soviet organs. There exist ten "commissariats of the people" (ministries) intended for the administration of the Union and of the separate republics. Five of them handle problems of exclusively federal concern. These are the commissariats of foreign affairs, army and navy, foreign trade, ways of communication, and posts and telegraphs.¹⁴ The other five deal with questions of local, as well as of national, importance. These so-called "united" commissariats handle public economy, the supply of provisions, labor, finance, and workmen's and peasants' inspection.¹⁵ These last five commissariats are so organized that the local commissariats of the separate republics are their subordinate and dependent organs. The central federal commissariats direct the activities of the local bodies, with the result that the local commissariats merely carry out the directions of the central body.¹⁶ These local commissariats are in no way the organs of the separate republics; they are in reality local branches of the central federal commissariats. For the purpose of supervision, each of the five "united" commissariats sends its special superintendents to each of the separate republics.

¹⁴ See Evtikhieff, *Osnovy sovietskago administrativnago prava* (Moscow, 1925), p. 91.

¹⁵ *Ibid.*, p. 97; Const., Art. 50.

¹⁶ Const., Art. 54.

Moreover, while the separate republics have commissariats of the people, presumably under the control of the separate republics, these bodies are under the vigilant supervision of the federal commissariats. The constitution provides for special commissariats for the administration of purely local affairs in the separate republics; these handle local problems of agriculture, finance, supply of materials, labor, interior, justice, workmen's and peasants' inspection, public education, public health, and social aid.¹⁷ However, many of these commissariats are controlled by the central institutions and in their activities must carry out the directions of the corresponding federal commissariats.

This analysis of the administrative machinery of the soviet system indicates the concentration of control in the hands of a few. All the commissariats of the people in the USSR and in the separate republics may be classified in three groups: (1) federal commissariats, (2) "united" commissariats, which have local as well as federal organs, and (3) purely local commissariats supervised by the federal agencies. This complicated system is created especially for the purpose of handing over to the central soviet administrative organs the entire power of directing the activities of the local commissariats.

A close analysis of the articles of the soviet constitution leads to quite an unexpected conclusion: the soviet federation is not at all a normal type of federation. A normal federation aims to establish the participation of the separate members of the federation in the federal power, to afford a number of legislative and executive rights to the members, and to protect their competence from the continual interference of the central government. Only if these necessary conditions are thoroughly observed can there be established that harmonious combination of rights, duties, and competences which is characteristic of a federal system.

The Communist "fathers of the soviet constitution" have emphatically stressed the rights of the nationalities. In the declaration announcing the formation of the Union of the Soviet Socialist Republics they solemnly stated that "only within the precincts of the soviet camp, and only under the proletarian dictatorship which has united around itself the majority of the population, did it become possible to uproot the system of the oppression of nationalities, to create the atmosphere of mutual confidence, and to lay the foundation of the brotherhood of peoples." But these solemn promises are only revolutionary phrases—so customary for the Communist leaders—behind which reactionary political activities are concealed. "The atmosphere

¹⁷ Const., Art. 67.

of mutual confidence" is in reality nothing but the right of the central federal government to supervise the activities of the individual members of the federation; and "the foundation of the brotherhood of peoples" is nothing more than the denial of the rights of the member republics of the soviet federation to the least display of independence. These promises are in complete contradiction with the administrative centralization practiced by the soviet régime.

Moreover, many of the articles of the constitution clash with one another as to the legal position of the separate republics within the Union. The sovereignty of the republics is admitted in theory, but in practice they cannot make any independent decisions. The Council of Nationalities is supposed to guard the interests and rights of the member republics; but the Council is controlled by a single state of the Union, and its powers exist on paper only. The separate republics have their own political institutions, but they are subjected to the ever vigilant supervision of the central government.¹⁸

The entire constitution of the USSR is woven of mutually contradictory provisions. The soviet federation is a rather primitive piece of machinery—machinery designed, not to guard, but to restrict, the rights of the separate republics. The idea of federalism is practically nullified by the system of centralization working under the cover of the federal soviet constitution. The intricate political task of the Communist authors of the constitution demanded the harmonizing of federalism and centralization. Two political ideas and two political programs collided: the idea of freedom for the nationalities with the idea of proletarian supremacy, and the program of federalism with that of centralization. From this collision there was born into the world a peculiar constitutional charter—federal in name, a centralized administrative dictatorship in practice.

PAUL P. GRONSKI.¹⁹

International Institute of Public Law, Paris.

¹⁸ Cf. H. N. Brailsford, *How the Soviets Work*, p. 108. "In externals these republics look like sovereign states which have come together, as the preamble puts it, for mutual protection and economic benefits. Their sovereignty, indeed, is recognized in a clause which, bluntly and without reservations or conditions of any kind, grants the right of any constituent republic to secede from the Union. When one comes to examine the constitution, this impression vanishes. For there is not one department in which, either expressly or silently, the absolute autonomy of the republics is recognized. Over all of them spreads the 'general principle' of the common model. The Soviet Union is the most centralized federation in existence."

¹⁹ Formerly professor at Petrograd.

NEWS AND NOTES

PERSONAL AND MISCELLANEOUS

Compiled by the Managing Editor

Professor Frank G. Bates, on leave of absence from Indiana University during the second semester, will spend the spring in Italy and England, and during the summer will teach at Cornell University.

Miss Edith C. Bramhall, formerly associate professor of history and politics, has been made professor of political science and head of the newly created department of political science at Colorado College.

Professor W. W. Willoughby is on leave from the Johns Hopkins University during the present semester and will spend the time in travel, chiefly in the Mediterranean area. A new and greatly enlarged edition of his *Constitutional Law of the United States*, published originally in 1910, will soon appear in three volumes.

Mr. William Watson has been assigned by the National Institute of Public Administration to accompany Professor E. W. Kemmerer, of Princeton University, on his mission to organize the finances of the Chinese Nationalist government. Mr. Watson will be assistant expert in accounting and fiscal control.

Dr. Carl E. McCombs, of the National Institute of Public Administration, is making a survey of hospital administration in Buffalo.

Professor W. Leon Godshall, of Union College, will give courses during the coming summer at the University of Pennsylvania on the relations of Latin America and the United States and the international relations of Asia. His *Tsingtao under Three Flags* is being published by the Commercial Press at Shanghai.

Professor W. E. Binkley, of Ohio Northern University, has been awarded a prize of five hundred dollars for an essay entitled "American Institutions." The contest was conducted under the auspices of the Lawyers' Club of the University of Michigan, and the essay will be published in the *Michigan Law Review*.

Professor Robert Phillips, of Purdue University, is on leave of absence for the present academic year, and is completing his graduate

work and giving instruction in American government at the University of Michigan. Mr. Lawrence Preuss has been appointed instructor in political science at the University of Michigan and is completing his graduate work in political science.

Professor James W. Garner, of the University of Illinois, has been in Europe since September. As a member of the staff of the Institut Universitaire des Hautes Études Internationales at Geneva, he has been lecturing on American foreign policy and conducting a seminar on nationality. He will remain for the Institute's summer session.

Professor Thomas F. Moran, head of the department of history and economics at Purdue University, and long an active member of the American Political Science Association, died at his home in West LaFayette, Indiana, on October 21, 1928. Mr. Moran was a graduate of the University of Michigan and held the doctorate from the Johns Hopkins University. He was the author of several books and contributed frequently to magazines on political and historical topics. His principal works were: *The Formation and Development of the Constitution* (1904); *The Theory and Practice of English Government* (new ed., 1908); and *American Presidents* (new ed., 1928). He also collaborated with Professor James A. Woodburn, of Indiana University, in the writing of a series of texts on history and government.

The second annual session of the Southeastern Citizenship Conference was held at Emory University, Atlanta, on February 12-16. Professor W. F. Dodd, of Yale University, spoke on administrative reorganization in Georgia; Professor Edward J. Woodhouse, of the University of North Carolina, on county government in Georgia, North Carolina, and Virginia; Dr. Walthor Merck, of Hamburg University, on the foreign relations of Germany; and Dr. A. T. Polyzoides, editor of *Atlantis*, on the present European situation.

A two-day institute on American foreign relations was held by the Cincinnati Foreign Policy Association on November 23-24. The topics discussed were: relations with Latin America; our commercial policy and relations; the relations of the United States with the League; and the Kellogg pact. The speakers were Professor Isaac J. Cox, of Northwestern University; Professor J. H. Latané, of the Johns Hopkins University; Mr. Julius Klein, of the Department of Commerce; Professor Paul H. Douglas, of the University of Chicago; Professor Manley O. Hudson, of the Harvard Law School; Dr. Carl Brinkmann, of the

University of Heidelberg; Professor Quincy Wright, of the University of Chicago; and Mr. John Bakeless, editor of the *Living Age*. In addition, Mr. Timothy Smiddy, minister to the United States from the Irish Free State, spoke at a dinner meeting on conditions in Ireland since the establishment of the Free State. Members of the political science department of the University of Cincinnati were largely instrumental in arranging the program for the Institute.

The fourth session of the Institute of International Relations was held at Mission Inn, Riverside, California, and at the University of Southern California, December 9-14. There were round tables on the new China, Japan, the Near East, the Kellogg peace pact, foreign policies of American political parties, problems of food and population, international commerce and finance, our Latin American policy, reorganization of the Department of State, and three or four other subjects. There were also general conferences on a wide variety of topics, in addition to a half-dozen special evening lectures.

It is reported from Washington that the Civil Service Commission is perfecting an arrangement for personal contact with colleges and universities to meet the competition of private industry for the services of new graduates from technical and scientific courses. Many of the larger private employers send their agents to educational institutions each year to recruit new workers from the graduating classes. Under the plan of the Civil Service Commission, such recruiting for the government will be undertaken by employees of the technical and scientific bureaus who find it necessary to visit the educational institutions from time to time for conference and research.

The creation of a foreign service school, modeled somewhat upon West Point and Annapolis, was recommended in a bill introduced on December 14 by Senator Thomas, of Oklahoma, who favors dividing the course of instruction into two branches, one to prepare applicants for the consular service, the other to prepare for the diplomatic service. The plan calls for a "board of foreign affairs" in the State Department to supervise the school and advise with the President and Secretary of State regarding foreign relations. The board would collect information, and "if not incompatible with the public interest," report to the Congress such information about foreign relations as it should consider necessary. The board would include in its membership the Secretary of State, the Under Secretary of State, the Solicitor of the State De-

partment, the Secretary of Commerce, the director of the bureau of foreign and domestic commerce, and the chairman and ranking minority members of the Senate foreign relations and House foreign affairs committees. It would have power to employ and fix the salaries and number of professors and instructors in the foreign service school and prescribe the course of instruction.

The American Political Science Association's committee on policy has authorized the establishment, on a limited scale, of a personnel service for college and university teachers of political science. A list of candidates now available for appointment has been prepared and may be had free upon application to Professor William Anderson, University of Minnesota, Minneapolis. All persons who now have the doctor's degree, all who expect to obtain the degree this year, and other qualified persons who wish to be considered for teaching positions in political science in colleges and universities for the year 1929-30 are invited to send their names at once to Professor Anderson. The information submitted will be treated as confidential in the cases in which the applicant so desires.

The scholarly world was shocked by the announcement on December 19, 1928, of the sudden death of M. Léon Duguit, dean of the Faculty of Law at the University of Bordeaux. Heart failure was reported as the cause of M. Duguit's death, which was all the more unexpected in that the venerable jurist possessed what appeared to be a physique remarkably robust for a man approaching seventy. For forty years M. Duguit had been professor of constitutional law at Bordeaux, and for about fifteen, dean of its Faculty of Law. Having sat in his classes, the writer can testify to the brilliance of his teaching, which inspired a veritable school of young scholars not only with a profound respect for his scientific attainments, but with a remarkable personal affection for their *grand maître*. His original contributions to political philosophy and public law are too well known in America to require enumeration. Suffice it to say that it was Duguit's positivist theory of the state, built upon the notion of *la solidarité sociale*, that paved the way for the political theory of pluralism in England, as well as for much of our sociological jurisprudence in America. Thirty years of fruitful writing on the part of the eminent French jurisconsult culminated in his monumental *Traité de droit constitutionnel*, which in the second edition filled five solid volumes. At the time of his death, M. Duguit was preparing a

third edition of his *Traité*, one volume of which appeared recently. His passing means an immense loss not only to French juristic scholarship, but to the study of public law throughout the Western world.

WALTER R. SHARP.

As was announced in a preliminary circular issued in 1925, the making of a complete subject catalogue of the books and pamphlets in the British Library of Political and Economic Science at the London School of Economics and Political Science was begun three years ago. Since the issue of that circular, the scope of the work has been enlarged so as to embrace other collections in London, in particular the valuable Goldsmiths' Library of Economic Literature belonging to the University of London, certain special collections including rare tracts and pamphlets at University College, and the libraries of the Royal Statistical Society and the Royal Anthropological Institute. The British Library of Political and Economic Science itself includes about 500,000 volumes and 250,000 pamphlets covering, besides economics and political science, the related fields in history, sociology, anthropology, geography, psychology, law, and many other branches of learning; all these 750,000 items (except those in the Edward Fry Library of International Law, for which a separate complete catalogue already exists, and a number of unimportant pamphlets which are catalogued in bulk) will be separately dealt with in the new catalogue. The other collections supplement the British Library of Economic and Political Science in many ways. An important feature will be the cataloguing under their subjects of nearly all the official publications of all the important countries of the world. The subject catalogue as a whole, although it naturally falls short of including all the literature of the social sciences, will, it is hoped, be the best single guide to that literature and an almost indispensable help to students in that field. With this in view, it has been decided, not simply to make the joint catalogue of the libraries named in card form, but to print and publish it for use elsewhere as a "London Bibliography of the Social Sciences." Its compilation is now so far advanced as to justify the hope that printing may be begun in the first half of 1929, and the work published and issued before the end of that year. It will be published in four volumes, containing roughly 5,000 large quarto pages. Three volumes will form an alphabetical subject catalogue, following the classification scheme of the Library of Congress, while the fourth will contain an alphabetical index of authors.

The annual report of the American Council of Learned Societies for 1928 is contained in Bulletin No. 9, published at the executive offices in Washington in December. The matters of chief interest to political scientists are (1) the creation of an advisory board to receive and consider research projects referred to it by the Council; (2) the setting up of a joint committee to facilitate delimitation of functions, and good working relations generally, with the Social Science Research Council; (3) the holding of the annual conference of secretaries of the constituent societies; (4) announcement of the impending publication of the survey of American learned societies prepared by the permanent secretary, Dr. W. G. Leland; (5) publication during the year of the report of the survey of research conducted by Professor Frederic A. Ogg; and (6) publication late in the year of the first volume of the twenty-volume *Dictionary of American Biography*, edited by Dr. Allen Johnson. Many other activities relating primarily to the fields of philosophy, philology, history, and archæology are described. Copies of the report may be obtained from the Council's executive offices at 907 Fifteenth Street., Washington, D. C.

The fourth annual report of the Social Science Research Council, covering the period from July 1, 1927, to the close of the Hanover Conference on September 1, 1928, has been distributed to members of the constituent organizations. It is therefore unnecessary to comment on the document here. One paragraph from the general survey of the year may, however, be quoted: "Steady development has marked every sector of the Council's work. The deliberations of the Council and its committees have been characterized by a healthy critical spirit which bids fair to prevent any lapse into routine administration; a new series of research fellowships in agricultural economics and rural sociology has been established to meet the urgent need for trained personnel in this field; the appointment of a permanent fellowship secretary, coördinating the Council's two groups of fellowships and its grants-in-aid, insures increasingly thorough work both in developing young research personnel and in furthering the researches of mature scholars; the possibility of long-term planning in connection with the growing program has been strengthened by the decision to appoint a permanent salaried president of the Council, and also by the decision to add to the central administrative staff a full-time research assistant; plans have been approved to widen the Council's membership through the addition of a limited number of members-at-large to those appointed by the seven constituent associations;

increasing coöperation with other research bodies, both in this country and abroad, has developed; and last, but not least in importance, the first substantial contribution toward financing the Council's general work has been received from a private individual, supplementing the generous support of various foundations." Copies of the report may be obtained from the Council's offices at 50 East Forty-second St., New York City.

The movement for permanent registration of voters has been greatly advanced because of the unusually large vote cast in the presidential election of last year, serving to emphasize the necessity for a sound registration system. Bills providing for permanent registration will be introduced in from eight to ten states at the legislative sessions starting in January. The National League of Women Voters has placed this subject upon its list for legislative action, and the state leagues of Indiana, Michigan, Ohio, and other states have taken active steps toward securing such a law. The state of Indiana does not have any registration of voters at present, the previous law upon the subject having been repealed in 1927. The League of Women Voters of Indiana has prepared a sound permanent registration bill, which it is sponsoring by public meetings in various parts of the state. In Michigan the state commission appointed by the governor to revise the election laws is considering a permanent registration bill backed by the League of Women Voters and several other civic organizations. The Citizen's League of Cleveland, along with the Ohio Institute and the state League of Women Voters, will promote a bill in Ohio. Permanent registration will be urged in Missouri by the Kansas City Public Service Institute, although its bill may apply only to Kansas City. The Philadelphia Bureau of Municipal Research will continue its movement for permanent registration at the present session of the legislature. Two years ago the New York State Election Commissioners' Association formed a special committee upon the subject, but the bill which this committee introduced in the last legislative session was lost during the closing rush. It will probably be introduced again this year. In New York it will be necessary to amend the state constitution to provide for permanent registration. The present permanent registration law in Kentucky has worked badly, particularly in Louisville, where serious frauds have taken place. The League of Women Voters of the state is proposing a sound law, though the next session of the legislature will not take place until 1930.

J. P. HARRIS.

Encyclopedia of the Social Sciences. In June, 1928, a meeting of the Joint Committee on the Encyclopedia of the Social Sciences was held at New York, at which informal reports on the progress of the work were presented and various problems as to the plan and procedure were discussed. On December 7 the annual meeting of the board of directors was held in New York, at which a report of progress was presented by the editor-in-chief, Professor Edwin R. A. Seligman, and the budget for the year was approved.

During the year the task of selecting the titles of articles has been actively prosecuted with the coöperation of specialists in the various fields, and suggested outlines of articles have been prepared for the guidance of contributors. Plans as to biographical articles have also received attention. It is proposed to give such articles about one-fifth of the space. Approximately one half of the first volume will be devoted to introductory material, including a series of chapters on the development of the social sciences. Large progress has been made also in the selection of contributors of particular articles, and definite arrangements have been made for a considerable part of the work.

Arrangements for publication have been made with the Macmillan Company, and plans have been completed as to the format and make-up of the volumes. The price of the work will be seven dollars and a half for each of the fifteen volumes, with a forty per cent rebate to members of the constituent societies who send in their subscriptions now.

The staff, under the immediate direction of Dr. Alvin Johnson, includes twelve experts (six men and six women) who are doctors of philosophy, besides secretaries, typists, and file clerks—a total of twenty-five persons, occupying about a dozen rooms. It is hoped to have the first volume ready in September, 1929, and that other volumes will be issued at intervals of about four months.

JOHN A. FAIRLIE.

Social Science Abstracts. The long-projected and carefully-planned journal, *Social Science Abstracts*, will make its appearance at the beginning of March under the editorship of Dr. F. Stuart Chapin. The purpose of the journal is to provide brief summaries of new material as promptly as possible after publication and thus to help workers in the social sciences keep abreast of the bewildering and rapidly increasing output of new work. The fields to be covered

include economics, sociology, statistics, political science, history, cultural anthropology, and human geography. Each issue will fall into two main parts, entitled, respectively, Methodological Materials (including historical, theoretical, statistical, and philosophical method in each of the disciplines) and Systematic (Content) Materials, arranged according to the several disciplines. A provisional scheme of rubrics, arrived at in each instance only after preliminary work by special committees, followed by a large amount of consultation, has been adopted for each discipline, subject to such changes as experience may prove desirable. In political science the main divisions are: political theory, jurisprudence, municipal public law, government (historical and descriptive), political parties and politics, governmental processes, the public services, international law, international organization, and international relations since 1920. A staff of some thirty foreign advisers, a much longer list of American consulting editors, and over eight hundred abstractors has been built up, with an estimated capacity of three thousand abstracts a month. Members of the board of directors mentioned below will also serve as division editors. Abstracts will be made of articles, beginning with July 1, 1928, and also of books, monographs, pamphlets, serials, etc., beginning in 1929.

Social Science Abstracts will be issued monthly, and in the first year at least 15,000 abstracts will be printed, varying in length from a mere citation of title in the case of less important articles to several hundred words in that of important contributions printed in inaccessible journals or in the less familiar foreign languages. Abstracts will be cross-referenced in each issue, and elaborate annual indexes will be published. Periodicals in all languages—a partial list drawn up during 1928 includes several thousand—will be searched for significant materials, thus giving the service a world-wide character. The journal will be published under the general auspices of the Social Science Research Council and under the immediate control of a board of directors consisting of Dr. Isaiah Bowman, and Professors Davis R. Dewey, Ellsworth Faris, Carlton J. H. Hayes, Frederic A. Ogg, Frank A. Ross, Clark Wissler, and Robert S. Woodworth. The subscription rate is six dollars a year. Subscriptions and other communications are to be addressed to *Social Science Abstracts*, 611 Fayerweather Hall, Columbia University, New York City.

FREDERIC A. OGG.

International Institute of Public Law.¹ The 1928 meeting of the International Institute of Public Law held its first session on October 20 in the Salle des Fêtes of the Faculty of Law of the University of Paris. There was at the beginning an administrative session presided over by M. Gaston Jèze. The mandate of the existing Council of Direction was extended and certain matters of internal organization were considered. The project dealing with the internal regulation of the Institute, presented by the secretary-general, M. Mirkine-Guetzévitch, was approved. The secretary-general read a report upon the matter of the publication of an *Annuaire de l'Institut* which should contain, each year, a report of all constitutional changes, the principal measures concerning public law, and the principal decisions, both administrative and constitutional, as well as political changes, in all countries. The annual is to be provided with an analytical table and will form a unique and necessary instrument of work for all persons interested in public law. The Assembly adopted this project.

In the afternoon of the same day the first plenary session was opened, under the presidency of M. Jèze. The president welcomed the members and thanked particularly the foreign members who had come from many different countries. M. Mirkine-Guetzévitch read the minutes of the morning session and informed the Assembly of the basis upon which the annual of the Institute would be issued. The Assembly decided to hold its next session during the last week of June, 1929, and the Council was charged with fixing the exact date. The following reports are to be presented for discussion at that meeting:

(1) The rule of law and the objective law; reporter, M. Duguit.²
2) Theoretical and practical value of the principle of the separation of powers and its application in the public law of modern states; reporter, M. Redlich. (3) The importance of the rules of constitutional law for the conclusion and ratification of international treaties; reporters, MM. Politis and Schücking. (4) The crisis of representative and parliamentary governments in modern democracies; reporters, MM. J. Barthélemy and A. Lawrence Lowell. (5) The question of the referendum and the popular initiative; reporters, MM. Fleiner, Garner, Kelsen, and Thoma. (6) The political rôle of parliamentary commissions; reporters, MM. J. Barthélemy, Kaufmann, Merkl, and Rolland.

¹ Translation furnished by Eldon R. James, Law School of Harvard University.

² Professor Duguit died in December, 1928.

In accordance with the proposal of M. Alvarez, the Assembly decided to make a critical examination of the Declaration of the Rights of Man, and at the suggestion of M. Jèze, the different individual liberties will be studied, commencing with property. M. Gascon y Marin was designated as one of the reporters of this commission, the other reporters and the members of the commission to be named later.

The president declared the report of M. Kelsen upon the jurisdictional sanction of constitutional principles open for discussion. The reporter made a short résumé of his report, and in the ensuing discussion MM. Barthélemy, Duguit, Gascon y Marin, Jèze, Kelsen, and Thoma took part. The second plenary session was held on October 22, M. Fleiner presiding. This session was devoted to the discussion of the report of M. Jèze upon the juridical significance of public liberties. M. Jèze gave a résumé of his report, which was discussed by MM. Barthélemy, Duguit, Gascon y Marin, Kelsen, Nolde, Politis, and Thoma.

These two discussions, which were quite animated, will be contained in special publications of the Institute, and because of the competence of the speakers and the interest of the subjects dealt with, have given to the labors of the Institute a special importance. The discussions were in French, except for some replies by M. Kelsen, which were in German.

After the discussion, M. Jèze resumed the chair. Thanking the foreign members, and remarking upon the interest displayed in the scientific work of the Institute, he closed the session. The session had a truly international character and a high scientific value. By reason of the competence of its members and the importance of the subjects studied, the International Institute of Public Law has become a veritable center of the science of European and American public law.

Annual Meeting of the American Political Science Association. The twenty-fourth annual meeting of the American Political Science Association was held at the Stevens Hotel, Chicago, December 27-29, 1928. The registration was 235, as compared with 292 at Washington in 1927, and 157 at St. Louis in 1926.³ The program was as follows:

³ The total registration of the American Economic Association and associated organizations was 1,316.

THURSDAY, DECEMBER 27

10:00 A.M. Round Table Meetings.

1. *Problems of Personnel Administration.*

Fred Telford, Bureau of Public Personnel Administration, Washington, D. C., Director

Discussions led by: W. F. Willoughby, Washington, D. C.; Luther Gulick, Director of the National Institute of Public Administration, New York City; E. O. Griffenhagen, Chicago; Morris B. Lambie, University of Minnesota; Edward A. Cottrell, Stanford University; Charles P. Howard, Boston, Mass.; Charles P. Messick, Chief Examiner and Secretary of the New Jersey State Civil Service Commission; L. M. Short, University of Missouri

2. *Administrative Law.*

John Dickinson, Princeton University, Director

Discussions led by: Eleanor Bontecou, John P. Comer, James Hart

3. *Administration of Foreign Offices.*

Raymond L. Buell, Foreign Policy Association, New York City, Director

4. *Comparative Party Politics.*

John M. Gaus, University of Wisconsin, Director

Discussions led by: Harold S. Quigley, University of Minnesota; Kenneth Colegrove, Northwestern University; Walter R. Sharp, University of Wisconsin; Robert C. Brooks, Swarthmore College; Samuel Harper, University of Chicago; James K. Pollock, University of Michigan

5. *Teaching of Government.*

O. Garfield Jones, University of Toledo, Director

Discussions led by: Charles A. Beard, New Milford, Conn.; Clarence A. Berdahl, University of Illinois; Russell Story, Pomona College; W. E. Mosher, Syracuse University

6. *Political Corruption.*

Peter H. Odegard, Williams College, Director

Discussions led by: Orville S. Poland, New York; Brooke Graves, Pennsylvania; Harold F. Gosnell, University of Chicago; Stewart Lewis, New Jersey Law School

7. *Municipal Government.*

Ralph Boots, University of Pittsburgh, Director

Discussions led by: Thomas H. Reed, University of Michigan; Martin L. Faust, University of Pittsburgh; L. E. Carter, Cleveland Foundation; Joseph T. Miller, Pittsburgh; R. A. Egger, University of Michigan; H. K. Beyle, Syracuse University; E. S. Griffith, Syracuse University; F. N. MacMillan, Milwaukee; C. H. Wooddy, Chicago; W. B. Graves, Temple University; J. G. McGoldrick, Columbia University; C. C. Hubbard, Wheaton College; W. A. Gray, Municipal Administration Service, Kansas City; J. C. Charlesworth, University of Pittsburgh

12:30 P.M. Subscription Luncheon.

Presiding officer: Jesse S. Reeves, University of Michigan
The Constitutional Crisis in Yugoslavia
 Charles A. Beard, New Milford, Connecticut.

2:30 P.M. General Session.

Presiding officer: Arthur N. Holcombe, Harvard University
Political Incidence of Standardization in Industry
 P. G. Agnew, Secretary, American Standards Association, New York
Political Equalitarianism and Democracy
 T. V. Smith, University of Chicago

Discussion: Carl Brinkmann, University of Heidelberg, Germany

3:00 P.M. Meeting of the Executive Council and Board of Editors.**8:00 P.M. Presidential Addresses. Joint meeting with the American Economic Association and the American Statistical Association.**

Presiding officer: Silas H. Strawn, Chicago, Illinois
The Guidance of Production in a Socialistic State
 Fred M. Taylor, President of the American Economic Association
Perspectives in Political Science, 1903-1928
 Jesse S. Reeves, President of the American Political Science Association
What Price Prosperity.
 Carl Snyder, President of the American Statistical Association

FRIDAY, DECEMBER 28**10:00 A.M. Round Table Meetings. As indicated for Thursday****12:30 P.M. Subscription Luncheon.**

Presiding officer: Benjamin F. Shambaugh, State University of Iowa
Report of Policy Committee
 Thomas H. Reed University of Michigan
Report of Association's Representatives on the Social Science Research Council
 Charles E. Merriam, University of Chicago

2:30 P.M. Local Government.

Presiding officer: Kirk H. Porter, State University of Iowa
Campaign Expenditures
 Edward M. Sait, Pomona College
State Supervision of Local Finances
 Ivan L. Pollock, State University of Iowa
Special Municipal Corporations
 F. H. Guild, University of Kansas

4:15 P.M. Annual Business Meeting of the Association.

Presiding officer: Jesse S. Reeves, University of Michigan
 Annual report of the Secretary-Treasurer and of the Managing Editor of the *American Political Science Review*. Election of officers for 1929.

8:00 P.M. Open Meeting.

Presiding officer: Jesse S. Reeves, University of Michigan
Political Science in a Technical Civilization

Glenn Frank, President of the University of Wisconsin
Crime in the Modern City
 Frank J. Loesch, Chairman of the Chicago Crime Commission

SATURDAY, DECEMBER 29

10:00 A.M. Round Table Meetings. As indicated for Thursday
 12:15 P.M. Joint Luncheon with the Association of American Law Schools.
 Presiding officer: Thomas Reed Powell, Harvard Law School
Piedpoudre or Small Claims Courts
 Gustav L. Schramm, University of Pittsburgh
Criminal Justice in the Minor Courts
 Harry Olson, Chief Justice of the Municipal Court, Chicago

The Secretary-Treasurer reported a net increase of 80 in membership during the year, the total membership on December 15 being 1,746, of whom 49 were life members.

The balance sheet, and the operating account for the fiscal year December 15, 1927, to December 15, 1928, were presented by the Secretary-Treasurer as follows:

BALANCE SHEET

December 15, 1928

Assets

Cash on Hand—Operating Fund:

Cash in Bank—Checking Account.....	\$ 567.05
Petty Cash.....	1.15
Savings Account.....	1,200.00

\$1,768.20*Trust Fund:*

Savings Account.....	\$ 559.44
U. S. Treasury Bonds (\$1500.00 par value).....	1,537.81

\$2,097.25*Accounts Receivable—Members' Dues:*

One year unpaid.....	\$ 688.00
Two years unpaid.....	448.00

\$1,136.00

Accounts Receivable—Index, Publications, etc.....	157.72
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Total Assets.....\$5,159.17

Liabilities and Surplus

Dues Advanced by Members.....	\$1,124.00
Surplus of the Association.....	4,035.17

Total Liabilities and Surplus.....\$5,159.17

Operating Fund

*Cash Receipts and Disbursements for the
Year Ending December 15, 1928**Receipts in 1928:*

Dues Collected from Members.....	\$6,482.75
Special Contributions.....	734.75
Sale of Publications.....	454.36
Advertising.....	365.70
Sale of Index.....	548.02

<i>Total Receipts</i>	\$8,585.58
Cash on Hand—December 15, 1927.....	1,408.96
<i>Total Cash Available</i>	9,994.54

Disbursements in 1928:

Review—Printing.....	\$4,631.46
Review—Reprints, Postage, etc.....	387.29
Managing Editor—Miscellaneous Expense.....	509.06
Managing Editor—Traveling Expense.....	67.19
Honorariums.....	217.00
Secretary and Treasurer—Clerical and Stenog.....	748.75
Secretary and Treasurer—Stat., Print., and Postage.....	146.31
Secretary and Treasurer—Traveling Expense.....	46.36
Secretary and Treasurer—Miscellaneous Expense.....	310.21
Dues—American Council of Learned Societies.....	83.30
Index Cost.....	586.12
Equipment.....	11.90
Representative, Enc. of Soc. Sciences.....	99.45
Annual Meeting Expense.....	266.20
Audit and Accounting System.....	86.00
Miscellaneous.....	29.74

<i>Total Disbursements</i>	<u>\$8,226.34</u>
Cash on Hand—December 15, 1928.....	<u>\$1,768.20</u>

Consisting of:

Cash in Savings Account.....	\$1,200.00
Cash in Checking Account.....	567.05
Petty Cash.....	1.15
	<u>\$1,768.20</u>

The estimates for 1929 called for a balance and receipts of \$10,418.20 expenditures of \$8,928.00, and a balance on December 15, 1929, of \$1,490.20.

The annual business meeting of the Association was attended by more than 100 members. Its most significant action was the adoption of the report of the Committee on Policy, which is presented elsewhere in this number of the *Review*.⁴ The Association also transacted other business of importance:

Article III of the constitution was amended to read as follows:

There shall be four classes of members of this Association:

1. *Annual members*. Any person may become a member of this Association upon payment of \$5.00, and after the first year may continue such by paying the annual dues of \$5.00.

2. *Sustaining members*. Any person paying annual dues of \$10.00, or more, shall be a sustaining member of this Association.

3. *Life members*. Any person paying dues of \$100.00 in a lump sum, or in five annual installments of \$20.00 each, shall be a life member of this Association, exempt from annual dues.

4. *Associate members*. Any graduate or undergraduate student registered in a college or university may become an associate member of this Association upon payment of \$3.00, and after the first year may continue such as long as he is so registered, by paying annual dues of \$3.00.

Each member shall be entitled to a copy of each number of the *American Political Science Review* issued during his membership.⁵

The Association approved the action of the Executive Council in voting the additional sum of \$250.00 for editorial assistance, and an annual honorarium of \$600.00 for the managing editor of the *Review*. In voting this honorarium, the Council expressed the feeling that this sum was not regarded as adequate compensation for the managing editor, but rather that the appropriation of it was a definite step toward providing such compensation.

Announcement was made of the resignation of Professors W. W. Willoughby and Bruce Williams as members of the Board of Editors of the *Review* and the election by the Executive Council of Professors Russell M. Story and Leonard D. White to serve in their places. The other members of the board were reelected.

Officers of the Association for 1929—nominated by a committee consisting of Dean Isidor Loeb, chairman, and Professors F. G. Bates,

⁴ See p. 184 below.

⁵ Article III formerly read as follows: Any person may become a member of this Association upon payment of \$4.00, and after the first year may continue such by paying the annual dues, amounting to \$4.00. Life membership may be acquired by a payment of \$75.00 in a lump sum, or in five annual installments of \$15.00 each.

Clyde L. King, F. A. Middlebush, and Graham H. Stuart—were elected, as follows: president, John A. Fairlie, University of Illinois; first vice-president, William Anderson, University of Minnesota; second vice-president, E. A. Cottrell, Stanford University; third vice-president, S. Gale Lowrie, University of Cincinnati; secretary-treasurer, J. R. Hayden, University of Michigan.

Members of the Executive Council for the term ending December, 1931, were chosen as follows: Kenneth Colegrove, Northwestern University; E. W. Crecraft, University of Akron; C. E. Martin, University of Washington; W. E. Mosher, Syracuse University; and F. M. Russell, University of California. Professor William Anderson, having been elected first vice-president, resigned as a member of the Council, and Professor J. Catron Jones, of the University of Kentucky, was elected to fill the unexpired portion of the term.

Dr. Charles A. Beard introduced, and Professor A. R. Hatton supported, the following resolution, which was unanimously adopted by the Association:

"WHEREAS, during the recent investigation of public utility companies under the auspices of the Federal Trade Commission an impression has been given to the public that certain universities and university professors have been receiving funds improperly for the purpose of carrying on propaganda in favor of the said utility companies,

Be it resolved by the American Political Science Association at its annual meeting in December, 1928: That the American Association of University Professors be respectfully requested to inquire into the foundation for such charges against universities and university professors, report to this Association their findings in relation thereto, and recommend to this Association standards of professional ethics applicable to such cases.

The Association also unanimously adopted a resolution commending the pending program for the expansion of the publications of the Department of State.⁶

Resolutions were unanimously adopted thanking Professor S. Gale Lowrie, chairman, and the other members of the committee on program, and Professor Kenneth Colegrove, chairman, and the other members of the committee on local arrangements, for their excellent preparations for the meeting.

J. R. HAYDEN, *Secretary*.

American Political Science Association—Report of Committee on Policy. The Committee on Policy, succeeding a preliminary com-

⁶ See p. 77 above.

mittee appointed in 1925, was created at the St. Louis meeting of the Association in 1926. Dr. Charles A. Beard was the first chairman, but after preparing a tentative program, which ultimately became the basis for the work of the Committee, he was obliged by absence from the country to resign and was succeeded by Professor Thomas H. Reed, of the University of Michigan. In the fall of 1927 the Committee secured from the Carnegie Corporation a grant of \$7,500 for the purpose of making a survey of the field of political science activity and the present and possible future place of the Political Science Association therein. To carry out this purpose, the field to be covered was divided among the members as follows: conditions favorable to creative work in political science, Charles A. Beard; research in politics, Charles E. Merriam; research in international relations, Pitman B. Potter; research in public administration, W. F. Willoughby; financing mature scholars, Russell M. Story; publication (other than the *Political Science Review*), John A. Fairlie; the *Political Science Review*, Frederic A. Ogg; instruction in colleges and universities, William B. Munro; instruction in normal schools, engineering schools, etc., Earl W. Crecraft; training for public service, Thomas H. Reed; personnel service, William Anderson.

Reports on most of these subjects have now been completed and distributed among the members of the committee. The committee has held four meetings, at Washington in connection with the 1927 meeting of the Association, at Iowa City in connection with the summer meeting of the Council in 1928, at New York on December 1, 1928, and at Chicago on December 26, 1928. As the result of its deliberations the committee formulated the following resolutions, which, upon being presented to the Association at the Chicago meeting, were duly adopted:

1. *Resolved:* That provision should be made for an executive director of the American Political Science Association, with suitable compensation and clerical aid; and that the executive director should be assisted by such committees as may be organized upon research, publication, personnel, membership, education for citizenship in the schools and adult education in citizenship, and for other purposes to be determined.

2. *Resolved:* That it should be the duty of the executive director, with the approval of the committee on research, to propose projects for research, and to receive propositions for research from members of the Association, from citizens, and from other associations, and

with the approval of the committee to promote such research projects by coöperation with universities and other research agencies and by raising funds independently for such research projects as are not otherwise financed.

3. *Resolved:* That it should be the duty of the executive director to keep a record of research work being done in political science, including doctoral dissertations and other projects.

4. *Resolved:* That it should be the duty of the executive director to study opportunities for employment in official and unofficial public service as well as in colleges, to maintain a roster of personnel available for such work, and to supply colleges, universities, other agencies, and individuals with information concerning opportunities for such employment.

5. *Resolved:* That it should be the duty of the executive director, with the advice of the committee on publication, to approve such projects as may be worthy of publication and to promote their publication by raising funds or by coöperation with publishing houses or with universities, and by other methods.

6. *Resolved:* That it should be the duty of the executive director to enlarge and strengthen the membership of the American Political Science Association. (The proper performance of this function may involve the transfer to the office of the executive director of certain functions now performed by the secretary-treasurer of the Association, in which case the Association will defray the expenses of such functions from its own funds, as heretofore.)

7. *Resolved:* That the Committee on Policy recommends the increase of the annual dues from \$4 to \$5; that a class of sustaining members be created, with dues of \$10 or more; and that a class of associate members be created, with dues of \$3, to be open to undergraduate and graduate students of colleges and universities.

8. WHEREAS the Committee finds, on investigation, that in two-thirds of the 268 colleges and universities reporting, the number of hours of instruction entails so heavy a burden upon the teacher as to prevent the effective prosecution of research, be it

Resolved: That the American Political Science Association should emphasize the grave responsibility of universities and colleges for the development of research in political science and urge an increase of the facilities for such research therein, including the expansion of funds available for original and creative work in this field, the establishment of professorships primarily for research, the extension of the practice

of affording relief from instruction for research purposes, and the provision of ample research equipment, services, and means of publication.

9. WHEREAS, in the present distribution of funds in aid of research inadequate provision is made to enable mature scholars to carry on important work through a period of years, be it

Resolved: That the universities and foundations be urged to provide more adequate support for selected research projects of more mature scholars.

10. A. *Resolved:* That the American Political Science Association could render a valuable service to research and instruction in political science by the publication of important documents, such as new constitutions, statutes, and other state papers, with accompanying historical and explanatory comments, such publication to be made as promptly as possible after the appearance of the documents.

B. *Resolved:* That it is desirable that efforts be made to facilitate the publication of special monographs in political science.

C. *Resolved:* That efforts be made to secure funds such as would permit the publication of the public documents and monographs referred to.

11. *Resolved:* That it is the sense of this Committee that the American Political Science Association should make early financial provision for editorial assistance to the managing editor of the *Review*, for reasonable remuneration to contributors, and for adequate compensation for the managing editor.

12. *Resolved:* That the Committee on Policy should be continued for the purpose of securing as far as possible the execution of the policies outlined in this report and with authority to solicit funds therefor.

As a result of discussion in the Executive Council, the following addition was made:

Resolved: That it should be the duty of the executive director to consider and report upon the relation of political science to the other social sciences, and to promote coöperation with other organizations in the social science field.

THOMAS H. REED, *Chairman.*

BOOK REVIEWS

EDITED BY A. C. HANFORD

Harvard University

Abraham Lincoln, 1809-1858. By ALBERT J. BEVERIDGE. (Boston: Houghton Mifflin Company. 1928. Two Volumes. Pp. xxx, 607; x, 741).

The Constitution of the United States which now and then a good many people have occasion to swear to support is not precisely identical with the document adopted at the close of the Revolutionary War and modified by three groups of formal amendments since the original adoption. The real Constitution under which the government operated down to the outbreak of the Civil War was very largely written in decisions handed down by John Marshall, Chief Justice of the Supreme Court. Albert J. Beveridge wrote the *Life of John Marshall*, in four massive volumes which constitute one of the foremost biographies in the history of American letters. The Constitution under which we have been operating since 1861, until the recent amendments permitting woman suffrage and certain other experiments, was very largely the product of movements and of legislation in which the outstanding name was that of Abraham Lincoln. Mr. Beveridge had a praiseworthy ambition to place on the shelf beside his *Marshall* four additional volumes dealing with the life and influence of Abraham Lincoln. He died with his task less than half accomplished. How impressive a work it would have been had he lived to complete it, we are able to judge both by what these two volumes contain and what they lack.

This work gives us no important new information concerning the Lincoln family, the Hanks family, or the birth or boyhood of Lincoln. No significant new sources were available for the author's inquiry, and his own travels were unimportant. Not a single document of marked significance appears in these pages which had not previously been inspected by other and competent biographers. He affords the satisfaction of a more acute mind and more discriminating literary acumen than Herndon, Lamon, and Weik in the use of some of the Herndon manuscripts, but he discloses no new facts of importance, and in his effort to discover something novel in the *disjecta membra* of the papers which Herndon assembled and of which Weik is the custodian, he

sometimes makes one wish that he had let them alone. His contribution is not in that field.

Two notable things he has done. First, he has related the Lincoln story more fully to the life of the nation, step by step, than other biographers have been able to do. His first sentence reads: "In America, democracy was in control of Congress; and the popular idol, Thomas Jefferson, was enthroned in the Presidency." Of course, Abraham Lincoln was not informed of this fact when he arrived in a log cabin in Kentucky on February 12, 1809, but Beveridge knew it, and the reader is not permitted to read the Lincoln story in detachment from national movements. Beveridge was able to keep the "close-up" and the wide perspective in remarkable focus. He might even have told us that John Marshall was on the Supreme Bench; but that was not necessary as a reminder to the reader that the same man wrote the two books. Nicolay and Hay entitled their indispensable but disappointing work, *Abraham Lincoln: A History*. So might this book have been entitled. It was to have been much more than a biography.

The other and more notable thing which this book has done is to trace the career of Lincoln as a politician as no one else has ever done it. Here Beveridge's two main reservoirs were in the Historical Library of the University of Illinois and the Library of the Illinois State Historical Society. Partly he dealt with the volumes of the Illinois General Assembly during the eight years when Lincoln was a member of that body, and partly with newspapers covering the whole range of years from 1830 when Lincoln first entered the state until 1860 when he left it for the presidency. To say that Beveridge was diligent is gravely to understate the truth. He worked with an intensity that burned his life out before its time. He knew no way to do it moderately. Those who worked with him were anxious, even alarmed, at his nerve-consuming energy. He knew no way to save himself. He used eyesight and tense nerve-strain with reckless extravagance. Few tasks are more exacting than the search of old yellowed newspapers and legislative reports. The present volumes are the product of unstinted effort carried to the length of a burning of life's candle at both ends.

The book grows better as the author shakes himself free from the Herndon material, which, valuable as it was, had already been well worked, and moves out into his orbit with Lincoln as a politician emerging into the proportions of a statesman. Beveridge is fair to the men who opposed Lincoln—Shields, Hardin, Baker, Trumbull,

and especially to Douglas. It would not be surprising if he should be accused of admiring Douglas more than he deserved. That, however, will not be the judgment of the more thoughtful readers. Beveridge's method in all this is a wise and worthy one. If only he could have lived to finish the book, a far greater Lincoln would have emerged from it than meets us at the end of the second volume. We may be sure this book does not end as it would have ended if Beveridge had lived to complete it.

The book has been permitted to go to press with far too many mistakes in it. There are errors that will be the more mischievous because Beveridge intended to be so careful to avoid them. This is not the place to list them, but they are there. The book is one of permanent and pathetic value. It is a politician's estimate of Lincoln as a politician. Had Beveridge lived to complete it, the work would have been the second and concluding chapter of a constitutional lawyer's account of the enlargement of the American Constitution. But even as it is, a truncated cone, a column broken beyond repair, it is a great book.

WILLIAM E. BARTON.

Vanderbilt University.

The Intimate Papers of Colonel House. Arranged as a Narrative by CHARLES SEYMOUR. (Boston: Houghton Mifflin Company. 1928. Vol. III, pp. xviii, 453; Vol. IV, pp. xii, 552.)

Students of history and political science will find the concluding volumes of Colonel House's papers exceedingly rich in first-hand materials. Not a single outstanding event during the momentous years between the entrance of the United States into the World War and the signing of the Versailles treaty escapes illumination from these pages. The part which our country played in the economic, fiscal, and military phases of the conflict, the struggle among the Entente Allies over unified command, the development of Wilson's idealistic theories respecting the war, the peace feelers, the Russian revolution, armistice terms, the Paris conference, every significant item in the peace treaty, the endless wrangling, and the outcome are all thrown into a new perspective by the light which streams from the Colonel's papers. They must be examined with minute care by everyone who would gain an insight into the personalities and acts of the drama. Nor are they less valuable for the study of contemporary international relations, of which the war diplomacy was merely a passing aspect.

Many controverted questions are here settled at last, and perhaps as many more raised to vex the champions of President Wilson. On pages 61-63 of the third volume, for example, the fiction that the President had heard little or nothing about the secret treaties before he reached Paris is completely demolished. On page 489 of the fourth volume is a confession that the Versailles pact was after all "a bad treaty." Colonel House himself wrote on June 29, 1919: "I wish we had taken the other road, even if it were less smooth, both now and afterward, than the one we took. We would have at least gone in the right direction. . . ." Practically a confession of defeat, this gesture of regret will certainly rile the keepers of the Wilsonian tradition and delight those realistic politicians who boast that we went into the war for the noble purpose of "saving our skins," *i.e.*, American stakes on the table.

Those who dabble in the philosophy of history, no less than the fact sifters, will discover here food for meditation. What a study in the organic relation of deed and word could be made by a detailed comparison of Colonel House's account of the armistice and the Fourteen Points (which came within an ace of being thirteen) with the account presented in the memoirs of Prince Max of Baden, the German chancellor! Under water up to their noses, the Germans grasped at straws—and they succeeded in getting hold of several little bits of pecto-cellulose, already water-logged. Yet Colonel House thinks that President Wilson did not have time, before he began, to tell our associates in the war what he was willing to fight for, and after it was all over he had to admit the discomfiture of "a bad treaty." It would be entertaining to hear a debate between Hegel and Antisthenes on this topic in the nether regions.

For the student of political science here is a vein of richest ore—a chance to examine under a microscope an immense and vital exercise of unofficial political power. He will be especially interested in discovering (III, p. 47) that in April, 1917, President Wilson had in mind writing a book bringing out clearly "the necessity for a more responsive form of government and the necessity for having cabinet members sit in the House of Representatives." This, the President thought, "would eventuate in something like the British system."

The editor, Mr. Seymour, is a true artist; he keeps himself out of his picture; but the power of "contemplation" is the power of Rodin, not the power of marble.

CHARLES A. BEARD.

New York City.

The Pragmatic Revolt in Politics. By WILLIAM YANDELL ELLIOTT.
(New York: The Macmillan Company. 1928. Pp. xiii, 540.)

Professor Elliott's book comes to redeem the long-continued neglect of political philosophy in the United States, a neglect the more curious because no one could defend it on the usual "pragmatic" ground that such philosophy is mere speculation barren of results. Here at least we cannot accept the usual facile dismissal—"never mind the theories, let's get at the facts." The theories that men hold about the state have profound practical significance. They are enthroned in institutions, like those of Bolshevism or Fascism or Constitutionalism, which control our lives and liberties. To Dr. Elliott one form of the "pragmatic revolt" is the refusal to reason out the theories we hold, and his very method is itself a protest against it. It is in fact one of the outstanding merits of his analysis that it seeks to pierce to the meaning, in terms of human life and destiny, of the great conflicting doctrines of government which have found, or are claiming, embodiment in the practice of modern states. Nor is it a minor merit that, taking a reasoned stand for constitutionalism against its modern opponents, he is not content to show the weaknesses of contrary theories, but offers a constructive interpretation marked by much vigor and discernment.

The author's starting point is the twentieth-century revolt against "the democratic and constitutionally unified state." In effect, all the doctrines of revolt are diagnosed as forms of "pragmatism." One may, perhaps, question whether the diagnosis is not too generally applied. At any rate, to Dr. Elliott pragmatism is a Protean principle, for it unites under one banner Mr. Dewey and Signor Mussolini, M. Duguit and Mr. Cole, Mr. Laski and M. Sorel. It is the common ailment of those who, like the pluralists, are engaged in proclaiming the new philosophies of revolt, and of those who, spurning theory altogether, busy themselves with the "scientific" measurement of public opinion or with "endless statistical studies of problems of administration, comparable, as T. R. Powell puts it, to 'counting the man-holes on sewers.'" Diverse as these reactions are, to the author they represent alike the anti-rationalistic spirit which treats ideals as myths and truths as experiments. Under this banner march the enemies, the unconscious as well as the deliberate enemies, of the liberal and constitutional state.

Undoubtedly these enemies have been out in strength. They have declared that public opinion is a delusion, parliamentary government

a fraud, democracy a failure. Some want to reform constitutionalism, but many want to destroy it. It is against the latter that the author directs his argument. We note with satisfaction that the general cause of democracy is again beginning to find worthy defenders who are no longer content with the stock arguments of the democratic tradition. The situation calls for new weapons of defense as well as of attack. Dr. Elliott's book, though quite different in style and in treatment, may in this respect be set alongside de Ruggiero's recently published *History of European Liberalism*.¹ Perhaps they are both signs that the attack is being stayed.

Dr. Elliott turns his guns particularly on the pluralistic and the fascist theories. He presents the most deep-reaching critique of these doctrines which can be found today. It is the more effective because it appreciates the conditions which stimulated these doctrines. The author recognises the defects of the traditional theory of sovereignty, though he makes rather little of its supreme defect, as seen in its application to international relations. What is required, he believes, is a reinterpretation, and not a rejection, of the principle of sovereignty.

This reinterpretation would ensure both the liberty of associations which the pluralists demand and the order within society on which the fascists insist. But it would not sacrifice the one to the other. To him, sovereignty is the assurance of "the community of purpose that is the state." Pluralism would disrupt and fascism would distort that community to meet particularist demands. Fascism, refusing to recognise either its true nature or its limits, thinks to manufacture it by coercion. But no force-system can "command the tide of human purpose." The community of will on which every stable government must rest is a real thing, this "general will" which Rousseau felt toward, but which he failed to analyze with psychological discernment; but it is not all-inclusive. Moreover, it cannot express itself through legal sovereignty unless that sovereignty is also the "guarantor of an increasing area of freedom."

To give positive form to his principle, the author describes it as "the co-organic theory of the state." The state, he points out, possesses, like every other organized grouping, two aspects: a structure and a purpose. Its members are united in a twofold way, by an "organic consensus" which maintains the structure, the means, and by a common sense of the values for which the group stands. The former is

¹ See review following this one. *Man. Ed.*

the economic aspect, the latter the moral. Dr. Elliott wants to use the rather curious term "co-organic" to express this double character.

Leaving aside the term itself, I am doubtful as to whether an analysis of this kind solves his problem. I should think that most of the writers whom he criticizes could accept this analysis and still maintain that it did not affect their argument. Why, for example, should not Mr. Laski declare that of course the state has a common purpose, but that so also has the trade union or the manufacturers' association? What Dr. Elliott is really concerned to show is the unifying character of the state's purpose, and his "co-organic theory" is not adequate to do so. It is in this direction that we may look for a further development of his work. It might be suggested that here he should follow a different method. He should develop the argument directly instead of by constant reference to the views of others. We hope he will go on to write a volume about the state, rather than about the views of the state with which he disagrees or agrees. The continual reference to the views of other authors makes the book repetitious and breaks its continuity of exposition.

The book, in fact, is to be welcomed no less for its fine promise than for its performance. It is the work of a true thinker, and that is rare enough. It is sincere and trenchant and thorough. As a critique of modern political trends, it is a book which no student of the subject can afford to neglect. Dr. Elliott shows an unusually extensive familiarity with the literature of his field, and happily combines a philosophical approach with the attitude of a scholar trained in the studies of government and jurisprudence.

R. M. MACIVER.

Columbia University.

The History of European Liberalism. By GUIDO DE RUGGIERO, translated by R. G. Collingwood. (New York: Oxford University Press. 1927. Pp. xi, 476.)

The complex character of the development of liberalism, on the Continent as well as in England, has not previously been available in any single work in English. This translation, excellently done, of the Italian work of Professor de Ruggiero, which was first published in Italy in 1925, is therefore greatly to be welcomed by students of political institutions as well as of ideas. It is the work of a competent historian, whose philosophical perspective is adequate to his task.

The liberty which modern liberalism has achieved is not based upon the feudal contractual dualism of group privileges, which was produced by the imposition of Germanic ideas upon the wreckage of the Roman world. It is "the liberty which universalizes privilege to the point of annulling it as such." The democratic strain which transformed liberalism throughout the nineteenth century is linked up with economic causes and with nationalism as well as with the ideas of political prophets. Agrarian reforms and industrial development are interwoven with the doctrines of economists and of political philosophers.

The development of civil liberty, a protection against the interference of government, guaranteed by the state, involved a conflict between laissez-faire theories and collectivism. Political liberty is used by the earlier English theorists and by Montesquieu as what de Ruggiero calls a "guarantism." But with the transformation of parliament from an organ of checking into a representative agency of control, the view held by Rousseau of the omnipotence of the general will transforms political liberty into an *equality of sharing* in the formation of laws. "Thus the [French] Declaration of Rights contains the terms of three Revolutions: a Liberal revolution in the strict sense of the term, a democratic revolution, and a social revolution: but these three only represent the progressive expansion of one and the same individualistic spirit developed to the extreme point of socialism; hence they all equally figure in the history of the Liberal mind" (pp. 72-73). The remainder of the work is an elaboration of this formula, pursued through examining theorists and constitutions, but hardly brought to bear sufficiently upon institutions as they function in practice. The emphasis on political machinery is very slight.

There are several other points on which criticism of de Ruggiero's emphasis or interpretation may be made. Although he shows the importance of Siéyès in connection with the development of the Third Estate into the broader democratic nation, he hardly does justice to the criticism which Siéyès leveled at Rousseau's dogma that the general will could not be represented. Parliamentary sovereignty required the apology of Siéyès rather than of Rousseau.

In the second place, socialism requires a greater limitation than de Ruggiero is prepared to give it if it is not completely to swallow liberalism. What remains of "guarantism" in the socialist democratic state? Some federalization of authority is suggested in the recognition

of the autonomous character of workmen's groups and the separation of church and state. But the practical limits of state authority or of group pluralism are hardly resolved by pointing out the practical limits imposed upon socialist parties by the democratic struggle for power (pp. 381-394).

When one has included also the too scanty considerations of the international implications of Liberalism, and the dismissing of the origins of the internationalism both of the League and of class solidarity, one has about closed the list of major points for criticism. An Italian scholar, standing outside the narrow egotism of modern Fascism, seems to have been peculiarly able to interpret the unity of European liberalism and the contributions made to it by the great thinkers of France, England, and Germany, as well as by those of the Risorgimento.

De Ruggiero's conclusion, although written under the shadow of Fascist dictatorship, rests upon the perspective that he shares with Croce and Ferrero: "Recent experience affords a proof of the vitality of the Liberal state, hard beset, yet issuing victoriously from the battle. Its rivals, the 'technical' state, the 'administrative' state, the 'dictatorial' state, have served only to vindicate once more, by their virtual bankruptcy, the triumph of the 'political' state."

It is a book of great importance, competently and in places brilliantly conceived, that should hearten, through its careful array of evidence, all those who believe that only through free association and the dialectic of constitutional responsibility can the creative forces of modern industrial society be at once guided and made fruitful.

W. Y. ELLIOTT.

Harvard University.

History of American Political Thought. By RAYMOND G. GETTELL. (New York: The Century Company. 1928. Pp. ix, 633).

This book represents the first attempt which has been made during the past twenty-five years to survey the entire field of American political theory, and it is easily the most comprehensive treatment of the subject ever prepared. Professor Gettell set as his goal a description not merely of the most important writers and individual treatises but also of the general lines of development in American political thought, and his interpretation of "political thought" is so broad that he includes foreign policy within it, nearly one hundred pages being given to that aspect of American history.

The introductory chapter indicates the general nature, the main tendencies, and the most important sources of American political thought. There follows a rather short chapter in which the European background—international, economic, constitutional, and philosophic—is sketched in. After a chapter dealing with ecclesiastical and political institutions in the colonies, and with early American political theory, come nine chapters carrying the story from the Revolution through the period of Reconstruction. Usually there is in each chapter a brief historical introduction, a survey of foreign affairs for the period, and a consideration of the various movements of theory during the time. The remaining seven chapters deal with recent political issues, foreign relations since the Civil War, theories of governmental organization and functions, theories of municipal government, and new influences on political thought.

If one may judge by the foot-notes, nearly all of the material is taken directly from the sources, and these notes constitute a very useful bibliography of source material in this field. Each chapter has a separate list of references devoted to the secondary writings on the subject or period under consideration. Indeed, the book as a whole constitutes the most adequate bibliography now available in American political theory. Its value as a reference work is, however, somewhat lessened by the presence of a number of errors of fact and a few statements which are sufficiently questionable to require more explanation than they receive. Some examples may be given. It is clearly incorrect to say that Pitt and other "liberal statesmen" in England accepted the point of view which the Americans adopted in 1774 (p. 85). Pitt claimed for Parliament general legislative supremacy over America, denying it only the power of taxation. It was in 1776, not in 1781 (p. 100), that the Continental Congress recommended to the colonies the establishment of governments independent of England. And not all of the original state constitutions made a "clear distinction between constitutional law and statutory law" (p. 101). Nor is it accurate to say that Woolsey "rejected the doctrine of natural rights" (p. 401). He did abandon the theory of a state of nature, but he devoted 137 pages of his *Political Science* to an exposition of his own particular brand of natural rights philosophy. The Virginians of the period of Dale's laws, or the residents of Massachusetts under the early oligarchy, would have been surprised to read that the colonists "found themselves in a state of nature" (p. 71). At most, this statement could apply to a relatively small number of

the early settlements. If John Adams "set forth the doctrine of nullification" in 1765 (p. 161), the same is true of practically every pamphleteer of the time. Nor is it clear why the term "nullification" is used. A comparison of Adams's early and later writings will cause one to doubt whether his later works show an abandonment of the natural rights theory and whether his early writings do not indicate a belief in the historical method (p. 163).

However, when the inclusiveness of the book is considered, it is apparent that there are relatively few errors, and its usefulness as a reference work is such that all teachers of the subject will be grateful to its author. In the opinion of the present reviewer, the book is, in both scope and method of presentation, so encyclopedic as to prevent it from being of great value except as a book of reference or guide to the literature of the subject. If it touches upon nearly all important writings in the whole range of American political thought, it deals thoroughly with none of them. For instance, John Wise is discussed in twenty-four lines, the Convention of 1787 in seven pages and Jefferson in six; individualism, government regulation, socialism, anarchism, and syndicalism are all disposed of in twenty-one pages, and the recent "able group of writers" who have "attacked the basic principles upon which democracy is defended" receive twenty lines. It seems doubtful whether such brief descriptions will be particularly informative either to the reader already familiar with the material in question or to the beginner in the field.

Moreover, the treatment is mechanical as well as sketchy. This is probably due in part to a desire for objectivity. In the preface the author states that he has tried to present fairly the point of view of both sides in controversial questions—an intention which has been carried out. Now if the philosophies embodied in those arguments are to be made to live again in the mind of the reader, the author must provide interpretation, and historical and philosophical guidance as well as fair descriptive summaries. In the present work there is more historical guidance than has been the case with previous books on the subject, but there is little attempt at analysis, interpretation, or evaluation. The objective attitude requires that the scholar enter upon an investigation without preconceived opinions; it does not preclude the desirability of critical examination and of philosophic discussion. Unless the history of political thought is to be deprived of the intellectual interest which is its birthright, analysis, inter-

pretation, and evaluation must be regarded as just as essential as accurate description.

BENJAMIN F. WRIGHT, JR.

Harvard University.

Ancient Chinese Political Theories. By KUO-CHENG WU. (Shanghai: Commercial Press, Limited. 1928. Pp. 340).

This is a study based upon works of the outstanding political and philosophical thinkers of ancient China. Each chapter, with the exception of the first three, which are introductory, may be described as an essay on the theory of a given thinker. The book itself has no preface, introduction, or index. The absence of the last is undoubtedly a fault. The volume is to be commended, though, for its brief description of the primary sources for a study of ancient Chinese political theories. It is a contribution to the study of political science in western countries. It will aid those of us who are still teaching what we were taught in getting away from the old classification of "political" and "non-political" peoples. Ancient Chinese philosophers had a theory of the state, and many of the early Chinese thinkers were in very deed political scientists.

The author writes of the most important thinkers of the Chow period, although he uses earlier sources. One wishes that he had expanded his studies to include the thinkers of a few centuries later also. This statement implies that Dr. Wu's shortcomings are sins of omission rather than commission. We want and need more. There are many great thinkers who might be mentioned. I shall mention but two: Wang Mang (1st century A.D.), for his theories on farm relief and the abolition of slavery; and Heang Seu (6th century B.C.), for his program for the pacification of China through the instrumentality of a league of states.

Dr. Wu's chapter on Shang Yand is exceptionally strong. We are sure, after reading his chapter on Laotze, that the author has a Buddhist point of view—unconscious, it may be—or else it is that the Great Buddha and Laotze are verily children of the same century. Laotze, with the Buddhist tinge, is not offensive to me. I like Dr. Wu's Laotze. Personally I like to think of the Canon of Shun as China's constitution; therefore I do not take kindly to the association of the idea of constitution with the treatise on "The Officers of Chow." Dr. Wu's discussion of this great treatise on government is, however, thoughtful and informing. There is much in "The Officers of Chow"

for our modern sociologists, and for those interested in the theory of punishment. I cannot agree with Dr. Wu on Mencius. Mencius will always appeal to Americans. Dr. Wu uses this paragraph in speaking of Mencius' theory: "The merits of such a theory are self-evident. It is thoroughly democratic. It elevates the position of the individual. It has for its cardinal principle the equality of man; and it renders no more homage to the sovereign than to the subject. Thus we find that Mencius approves the right of revolution and believes in the doctrine that government exists, and should exist, only for the governed."

Considering how modern this thought is, even for the western world, what student of politics can neglect China's great Chow period? For, was not the Chow period that in which was forged the subsequent culture of Eastern Asia?

To repeat, Dr. Wu's book is welcome. It is doubly welcome because the author is a Chinese.

ELBERT D. THOMAS.

University of Utah.

The Paradoxes of Legal Science. By BENJAMIN N. CARDOZO. (New York: Columbia University Press. 1927. Pp. 142.)

It may be not too much to predict that as the account now stands the chief American contributions to literature and the progress of human thought will prove to have been made in the field of jurisprudence. The writings of Holmes, Cardozo, and Pound have presented the results of a deeper probing into the operation of the legal system than had been before attempted by men bred to the common law, and have presented those results in most instances with a vividness and rare literary charm which are usually alien to the field of abstract speculation. Mr. Chief Justice Cardozo's latest volume, consisting of a course of lectures delivered in 1927 on the Carpentier Foundation at Columbia University, adds another item to the anthology of distinguished American contributions to juristic theory.

As the title of the book indicates, the central problem which engages the attention of the Chief Justice is suggested by his observation that the task of the law is to solve antinomies. "The reconciliation of the irreconcilable, the merger of antitheses, the synthesis of opposites, these are the great problems of the law. . . . We have the claims of stability to be harmonized with those of progress. We are to reconcile liberty with equality, and both of them with order. The property rights of the individual we are to respect, yet we are not to press them

to the point at which they threaten the welfare or the security of the many. We must preserve to justice its universal quality, and yet leave to it the capacity to be individual and particular" (pp. 4-5). Therefore the goal of juridical effort is not logical synthesis, but compromise in the effecting of reconciliations.

The Chief Justice addresses himself primarily to the great paradox involved in the need for compromise between stability and progress. It is the task of the judges to build new law, where the building of it is left in their hands, which will be adapted to the needs of society; and the needs of society are changing needs. The author lays down a working rule for judges confronted with such a task: "When changes of manners or business have brought it about that a rule of law which corresponded to previously existing norms or standards of behavior corresponds no longer to the present norms or standards, but on the contrary departs from them, then those same forces or tendencies of development that brought the law into adaptation to the old norms and standards are effective, without legislation, but by the inherent energies of the judicial process, to restore the equilibrium" (pp. 14-15). "The pressure of society invests new forms of conduct in the minds of the multitude with the sanction of moral obligation, and the same pressure working upon the mind of the judge invests them finally through his action with the sanction of law" (p. 18). "At times the new *ethos* does not mean that there has come into being a new conception of right and wrong. It may mean nothing more than a new impatience, a new restiveness, in the face of old abuses long recognized as wrong. Transition stages there are also when an observer can mark the law in the very process of becoming. It is throwing off a crippling dogma, and struggling for freer motion" (p. 25). "Our course of advance, therefore, is neither a straight line nor a curve. It is a series of dots and dashes. Progress comes *per saltum*, by successive compromises between extremes" (p. 26).

These compromises are effected by the judges' conception of the demands of justice. This conception must be no purely personal one, but must result from an effort to interpret the morality of the community. "Law accepts as the pattern of its justice the morality of the community whose conduct it assumes to regulate. In saying this, we are not to blind ourselves to the truth that uncertainty is far from banished. Morality is not merely different in different communities. Its level is not the same for all the component groups within the same community. A choice must still be made between one group standard

and another. We have still to face the problem, At which one of these levels does the social pressure become strong enough to convert the moral norm into a jural one?" (p. 37). The pressure is exerted on the judges, and the choice is for them to make. "When this pressure has gone so far that it may no longer be resisted, the judges are to say. For they are the interpreters of the social mind, its will, its expectation, its desires" (p. 48). "In order that such a moral claim should become juridical, it must pass through . . . the stage of declaration of right. A declaration of right is the admission by organized society that the claim is justified from the public point of view. Organized society may speak in such matters by the voice of its representatives in legislative assemblies. It may speak, at least in our Anglo-American system, by the voice of its judges" (p. 49).

These striking passages steer perhaps the truest and straightest course yet struck between "realists" who insist on the half-truth that social forces dictate law, and Austinians who neglect to notice that the legislative organ in making law is largely influenced by the action of such forces.

JOHN DICKINSON.

Princeton University.

Principles of the Constitutional Jurisprudence of the German National Republic. By JOHANNES MATTERN. (Baltimore: The Johns Hopkins Press. 1928. Pp. xv, 682.)

Abhandlungen zur Reichsverfassung. Edited by WALTER JELLINEK. (Berlin: George Stilke.)

Volksentscheid und Volksbegehren. Ein Beitrag zur Auslegung der Weimarer Verfassung und zur Lehre von der unmittelbaren Demokratie. By CARL SCHMITT. (Berlin and Leipzig: Walter de Gruyter & Co. 1927.)

Dr. Mattern's book is one of the few whose title properly indicates precisely its content. The tenth anniversary of the drafting of the German republican constitution is an appropriate moment for the appearance of a volume which sets forth in an exact and scholarly fashion the principles of law which gave form to those political forces involved in the cataclysm of the Revolution. Since the author is appropriately non-committal regarding the future, the extent to which his treatise will interest the prospective reader depends largely upon whether the latter shares with the author a desire to know what the

"success or failure [of this constitution] will contribute to the general field of constitutional jurisprudence, and above all to that body of opinion which aims at the elaboration and practical realization of a theory of the state whose affairs are conducted by a government of law, or, more correctly, a government of men subject and obedient to law."

This review hardly offers an opportunity to discuss with the author the validity of such a theory of the state. After all, no one will quarrel with him for having "undertaken to present to the student the general principles upon which the framers of the constitution have avowedly constructed the new fundamental law of the National Republic." As a matter of fact, Mr. Mattern has at times done a good deal more than to present simply the principles. He has, for example, attempted to gauge the meaning of various clauses of the constitution by an analysis of the constitutional debates in Weimar, a task the fulfillment of which was greatly needed. Controversies of an extended sort have raged over many of the more important clauses of the constitution, and, in the opinion of the reviewer, Mr. Mattern has delved into these scholastic complexities with a certain real sympathy for the logical and jural niceties involved therein.

The author has divided his material into three parts, entitled Historical and Theoretical Background, Relations of Reich and Länder, and the National Government. Part I is subdivided into four chapters dealing with the German constitutional system prior to the Revolution, transition from monarchy to republic, conception of state and sovereignty in German constitutional jurisprudence, and the question of the legal continuity of Empire and Republic. Part II also has four chapters, entitled: division of competences between Reich and Länder, national administrative control over the Länder, states, rights, and the national unitary state. The last part presents six chapters, on the choice of a parliamentary form of government, executive and legislative departments, the ordinance power of the national government, direct government by popular election, initiative, referendum, and recall, the national judicial system, and special topics and conclusion.

Throughout the work, it is the prevailing method of Dr. Mattern to consider the relevant constitutional provisions in the light of the discussions of the national constitutional convention and the subsequent discussions of the German jurists, like Preuss, Anschütz, Hatschek, Kahl, Pötzsch, and others. This is particularly true of the theoretical discussions of Parts I and II. His "decision" seems to be drawn

on the "juridically" sound ground of "majority" or prevailing opinion. From the more strictly theoretical point of view this is perhaps less satisfactory, and a treatise primarily devoted to theories of state and sovereignty would be ill-advised to follow such a course. But it serves the rather important function of interpreting into English the abstract, and sometimes rather scholastic, juristic reasoning of German treatises on constitutional law. The reviewer has been able to use the book to seemingly good advantage for just that purpose in an advanced class. Whether the author was wise in leaving quite so many of the German abstract notions untranslated is a difficult question to answer. They certainly are untranslatable in any strictly logical sense. But they considerably increase the difficulty of reading.

Such careful presentation of the conflicting arguments of German jurists does not leave the author time or space to discuss the underlying political realities. These, however, do not form part of the objective of his book as defined in the title. The only part which really suffers from this self-imposed limitation is the historical introduction, which is decidedly thin. But it may be doubted whether anything more real could have been presented within the avowed purpose of the book. To sum up, the value of this work lies, on the one hand, in its exposition of prevailing German constitutional jurisprudence (with perhaps a little bit of partiality towards Anschütz), and, on the other, in its frequent reference to the constitutional convention of 1919, with which the author seems thoroughly familiar.

More and more detailed work is being done on the constitutional and political workings of the new German constitution, and the fear is not entirely unfounded that the vast amount of scholarly *minutiae* turned out by the intensely specialized German scholar will soon obscure the essential structural problems involved. Under the general title of *Abhandlungen zur Reichsverfassung*, Professor Walter Jellinek is editing a series of studies dealing with specific problems of the new constitution. They are obviously dissertations. The first of these, by Dr. Carl Schumacher, is entitled *Die Redaktionskommission des Verfassungsausschusses, ein Beitrag zur Vorgeschichte der Reichsverfassung* (pp. 85). It deals with formal changes which a small revising committee made in the text of the constitutional draft after it left the drafting committee of the convention. The author reaches the conclusion, at the end of his analysis, that the alterations of significance were few, and that the committee, on the whole, performed its work admirably.

Under the title of *Preussen und seine Provinzen im Reichsrat* (pp. xvi, 147), the second publication of these *Abhandlungen* deals with the theory and the complex practical problems of the composition of the new National Council in general and the representation of Prussia and its provinces therein in particular. The author of this essay, Dr. Fritz Hummel, again deals with his topic in a legal manner, although he adds a good deal of historical, and some foreign, material for purposes of comparison. He indicates, to some extent, actual political practice under the existing law. The center of the whole discussion is the undecided issue as to whether the Prussian government can interfere with the independence of the representatives of the provinces. This question is related to the general problem of Prussia's influence in the Reich, and is therefore of considerable political significance, particularly in connection with the present movement for a reorganization of the relations between Prussia and the Reich. A good bibliography enhances the value of this painstaking study of a difficult matter.

A series somewhat different from that of Professor Jellinek is that of the *Institut für ausländisches öffentliches Recht und Völkerrecht*, edited by Professor Viktor Bruns, to which reference has been made previously. The second issue of these *Beiträge* is an interesting contribution of Professor Carl Schmitt on the problems of the referendum and initiative. Mr. Schmitt touches upon the significance of these matters both under the Weimar constitution and as a general problem of the doctrine of direct democracy. This study, entitled *Volksentscheid und Volksbegehren*, is valuable beyond its strictly constitutional significance on account of the well-known position of the author in the field of political theory.

CARL JOACHIM FRIEDRICH.

Harvard University.

State Government. By FRANK G. BATES AND OLIVER P. FIELD. (New York: Harper and Brothers. 1928. Pp. vii, 584.)

This book, as explained by the authors, was written to serve as a text in a survey course in state government offered to undergraduates in colleges and universities. This review is confined to the expressed objective.

A course in state government may presuppose that the students are familiar with the general phases of American government. With this prerequisite, a first task is to approach the federal system from

a "state" viewpoint. This may involve the historical reasons for our particular federal system, how it differs from other systems, and the divisions and limitations of power. Professors Bates and Field, in Chapter II, have analyzed the division of powers in clear, concise statements which are easy to understand, and therefore excellent for assignment. Except for this chapter and a brief introduction to general theory underlying all governments, a student limited to the text must rely upon supplementary lectures, class-room discussion, and other readings for an understanding of the colonial origins of state government and of the development of political theory applied to the United States of America, and for a complete consideration of present problems of governmental relationships.

Having disposed of the first phase, i.e., the division of powers, the authors of a text-book on state government are confronted with the difficulty of describing the institutions, procedures, and forms within the states. Here they find forty-eight governments, each conforming to a general type but varying in important detail. If an attempt were made to compare practices under the usual headings, a single book, unless handled masterfully, would be unimaginative and dull. There is also the time element. A book written in 1928 as a photographic document picturing activities and relationships would run the risk of obsolescence in five years.

Professors Bates and Field have wisely avoided the extremes of minute comparative descriptions and of indefinite generalities. Without attempting to describe the forms and processes in all states, they have presented the practices common to all and observed, by use of parenthetical statements, the progressive advances and experiments for the few. In so far as space permits, some consideration is given under each chapter topic to the theoretical approach, the historical development, description of existing situations, and an appraisal of results. It is assumed that the application of problems to specific states, i.e., comparative state government, must again be reserved for lectures, class-room discussion, and reference to governmental reports. This, it would seem, completes the purpose—a condensed yet comprehensive outline brought down to date. Attention is held by the short paragraph method and by the liberal use of marginal headings.

The appendices contain the constitutions of Vermont (1771), Indiana (1850), and Arizona (1910), to illustrate, respectively, a government at the brink of colonial days, the government of a state

in the formative period during the intermediate stage of national development, and the government of a more recent state. There is also a copy of the Constitution of the United States. The references at the end of the chapters are to articles or books found in most libraries. There is a notable absence of references to official reports, state documents, and surveys, probably because these materials are not readily available to most undergraduates.

There are general basic problems more or less similar for all governments—national, state, and municipal. Professors Bates and Field have recognized this common thread. Nevertheless, a large portion of their book contains discussions of identical problems that are found in the standard books used in the other courses on applied government. This is not a criticism of their book any more than it is a comment upon other books used for steady required readings in the standardized courses which most students of state government also elect. If the basic material common to all governments and repeated in the single text-books on state, municipal, and comparative government were condensed into a single treatise, there might be greater economy in teaching time, student effort, and expense, and better results in clarifying the student mind. More time would then be permitted for a course in state government for consideration of the problems which make the course distinctive, namely, federalism, state constitutional law, and relationships of states to their municipal subdivisions.

In spite of the inclusion of subject-matter pertinent to other governmental units, the book under review is very adaptable for class-room purposes. Perhaps it will be most helpful if the instructor will also have available a complete outline of the government and public activities in a particular state. Thus used, it will furnish the background for the observation of an isolated state government in actual operation.

MORRIS B. LAMBIE.

University of Minnesota.

County Government and Administration in North Carolina. By PAUL WOODFORD WAGER. (Chapel Hill: University of North Carolina Press. Pp. xii, 447.)

This book will be welcomed by students of local government in the United States. It constitutes a substantial contribution to the rather meager list of books on county government that are based on

a sufficient amount of actual field work to enable the author to do more than write in generalizations. For more than a decade the University of North Carolina, under the direction of Professor E. C. Branson, has been investigating county government in operation in that state. In 1924 the Institute for Research in Social Science was founded, and as one of its first problems it undertook an investigation of county government and county affairs. As a part of this project, field investigators made intensive court-house studies in forty-three of the one hundred counties of the state. With the mass of data gathered by these investigators at hand with which to supplement his own observations, Professor Wager has written a comprehensive "general work describing the development, present organization and practice, and the outstanding needs, of North Carolina county government."

The content is presented in twelve substantial chapters, the titles of which will indicate the scope of the book: history of the North Carolina county; the county as a geographic area; the county as a political unit; the board of county commissioners; the assessment and collection of taxes; fiscal control; public highways; the administration of justice; public schools; public welfare and public health; minor officers; and efficiency in county government.

Professor Wager writes primarily for the people of North Carolina, with the purpose of acquainting them with the conditions which prevail in county administration, of explaining the cause and purpose of legislation recently enacted, and of suggesting further improvements that might be made in the interest of economy and good government. This fact increases the value of the book for students of county government in other states, because the situation is described as it exists, with no attempt to gloss over bad features; the criticism is constructive, and well-considered suggestions for improvements are woven into the discussion. County government has a bad name, and the reader will find practically all of the bad features and practices associated with the usual conception of county government to have a place in North Carolina—lack of responsibility, ignorance, inefficiency, carelessness, dishonesty, selfishness, complexity, waste, graft, fee system of compensation, indifference.

The hopeful aspect of the situation is that in this state county government is undergoing a process of change for the better, and already some remarkable advances have been made. The county-manager system is optional, and several counties are operating more

or less experimentally on that system. Recent legislation provides the foundation upon which county budget control may be developed, and a beginning has been made in the way of directing and regulating county borrowing. A county government advisory commission has been set up by the state for the double purpose of advising county officers and recommending legislative action. Remarkable progress has been made in the administration of public welfare and health.

Special legislation for individual counties has been carried to an extreme, and the variety and complexity of county government in North Carolina is astounding. At the present time a great deal of healthy experimentation is taking place. Coupled with an apparent determination to improve conditions, the situation is encouraging.

Professor Wager's book is the kind of study that is needed in the field considered. More rapid and intelligent progress could be made in the reconstruction of county government wherever it is needed if comparable studies were available for all of the states. Unfortunately, few such studies exist.

I. L. POLLOCK.

State University of Iowa.

Masks in a Pageant. By WILLIAM ALLEN WHITE. (New York: The Macmillan Company. 1928. Pp. xi, 507.)

Prophets True and False. By OSWALD GARRISON VILLARD. (New York: Alfred E. Knopf. 1928. Pp. x, 355.)

These two books give the first-hand impressions of two important American editorial writers regarding some of their contemporaries. Mr. White has rewritten and toned down some articles which appeared in *McClure's Magazine*, while Mr. Villard has collected obituaries and other sketches that appeared in his magazine, the *Nation*.

Regarding his purpose, Mr. White claims that he has merely assembled his reporters' notes in order to preserve the emotions of some passing moments. He describes three party managers—Croker, Platt, and Hanna—and eight presidents—Cleveland, Harrison, McKinley, Roosevelt, Taft, Wilson, Harding, and Coolidge. He also has an interesting discussion of Bryan and two short chapters on Alfred E. Smith and William Hale Thompson. In his treatment of Platt, Harrison, Bryan, and Wilson he shows the influence of modern psychology. While he purports to show the influence of these men on their times, he also shows the influence which their times had on them. In the main, the biographies are well balanced, interesting, and excellently

written. Only in writing about Roosevelt and Wilson does White appear to let his emotions run away with him. He admits that he knew Roosevelt best of all the presidents.

Mr. Villard has divided the objects of his editorial acumen into two main groups. The true prophets are those who share his views on economic liberalism, free speech, and pacifism. The false prophets are those who favor imperialism and militarism, or who are reactionary on economic matters. In the former group he clearly puts Smith, Borah, Norris, T. J. Walsh, La Follette, and F. Lane, while in the latter group he places Hoover, Hughes, Dawes, Curtis, E. M. House, Lodge, and Wood. He is a little uncertain as to where to place Lowden, Ritchie, Donahey, Bryan, Lansing, and P. K. Knox, but not all of his remarks regarding these men are unfavorable. The sketches are vigorously written, and there is no denying that Villard has been a keen observer and a courageous critic.

HAROLD F. GOSNELL.

University of Chicago.

La Agonia Antillana. By LUIS ARAQUISTAIN. (Madrid: Espasa-Calpe. 1928. Pp. 294.)

Mexico and its Heritage. By ERNEST GRUENING. (New York: The Century Company. 1928. Pp. xix, 727.)

These authors have in common a critical attitude toward the foreign policy of the United States in relation to the nations to the southward. Their manner of presenting their material furnishes the contrast of diatribe and an exposition based on wide reading and buttressed with abundant footnotes.

Mr. Araquistain declares himself an impartial critic. Those familiar with his *El Peligro Yanqui* will, however, find the same point of view in this later work. The United States, he argues, in crushing out the cultural life of the Caribbean and dispossessing the local populations of their land is gradually creating conditions which will drive the Spaniards out of the larger Antilles at least, and bring about their progressive Africanization. The author will doubtless have many readers—the book is in a second edition before the end of its first year—but its “history” and “economics” do not recommend themselves to those who are interested in facts rather than prejudices.

Mr. Gruening's volume is excellent—the best recent book on Mexico, and the only one giving an adequate review of recent develop-

ments. The shortcomings of the old régime are cut in high relief. Little space is given to the economic advance in that period which a more farsighted statesmanship might have made the basis for national regeneration. The chapters on the revolutionary movement and its ideals are frank and discount not at all the frequently glossed extremes and failures of both.

The greatest gain from the revolution is stated to be the agrarian reforms. That these reforms are in theory far-reaching, and that they continue to furnish the party in power with its political issue of widest popular appeal, is beyond question. That the agrarian reforms have actually accomplished something fundamental is not so clear. The lands taken over from private possession and turned back to the Indians have had a much larger place in discussion, both within and outside of Mexico, than their extent justifies. It is to be remembered, too, that only small payments have been made on the securities which the dispossessed are offered for their lands, and that the holding of large areas, particularly by those in high political position, continues a striking characteristic of Mexican economic life.

To many, the agrarian movement, so far as it involves land division, appears to have had an influence chiefly in alarming the landowner and discouraging improvement of real estate. Until the process of distribution comes to an end, this can hardly fail to be the case. It may further be questioned whether, after all, the setting up of communal land ownership with inalienable title is a real economic advance and a step which will lead to effective cultivation of the land. At best, it is only a first step, and the real success of the agrarian program depends on the awakening of initiative and the desire for a higher standard of life, neither of which is characteristic of the Indian population.

There are so many elements in the Mexican problem, and all the experiments of the revolution are so new, that it is not possible to say which constitutes the greatest advance or whether there has been a real advance. The revolution is still promising, and its task is still to "consolidate" its program.

Some of the most pleasing chapters of the book are those dealing with the programs involving general education, music, and art, all lines in which the Mexican people have undoubted aptness and which the revolution has given merited attention. Less detached in viewpoint is the discussion of American policy toward Mexico, which, with all its mistakes, is to most careful observers less uniformly bungling

than it appears to Mr. Gruening. The author's conclusions as to what that policy should be, however, will find few critics. Mexico is now, and long will be, a problem to herself quite as much as to her neighbors, a circumstance which in an unusual degree calls for forbearance and patience in the international policy of the country with which the relations of Mexico are of necessity of more importance—for Mexico—than are those with all other countries.

Though Mr. Gruening is evidently optimistic as to the progress which has been made and thinks less serious some of the errors in the revolutionary program than will many of his readers who know Mexico, he is under no illusions either as to the foundations on which Mexican leaders are building or as to the fragile character of the current government. "In the larger aspects of politics, it may be asserted that no progress whatever has been made since Mexican Independence. Mexico's order depends today on two individuals—Calles and Obregon. Were anything to happen to both of them, chaos would in all probability ensue at once." The volume was still fresh from the press when Obregon was assassinated.

No one who wishes to know the background and the significance of the most important of Latin American problems should fail to read Mr. Gruening's book.

CHESTER LLOYD JONES.

University of Wisconsin.

The Far East: A Political and Diplomatic History. By PAYSON JACKSON TREAT. (New York: Harper & Brothers. 1928. Pp. xi, 549.)

The Restless Pacific. By NICHOLAS ROOSEVELT. (New York: Charles Scribner's Sons. 1928. Pp. x, 291.)

Within the Walls of Nanking. By ALICE TISDALE HOBART. (London: Jonathan Cape. 1928. Pp. 243.)

Nothing is more encouraging to the American student of international relations than the steady and enlarging stream of volumes dealing with the Far East. Among recent studies in this field, those listed above are exceptionally important. Of the three, Professor Treat's is the longest and most detailed—the product of an historian. Mr. Roosevelt's is equally broad in its scope, but more general in its sweep and lighter in style—the work of an experienced observer and first-class journalist who has unusual powers of deduction and comparison. Mrs. Hobart's [and Mrs. Ayscough's] volume is in two

parts: the first is a sketch of the foundation and superstructure of China's ancient culture; the other is a consideration of certain ugly and unhappy aspects of the dissolution of that culture. Dr. Treat gives us a landscape in oils, full of detail, lights and shadows. Mr. Roosevelt presents a clear and lively panoramic photograph. Mesdames Hobart and Ayscough offer a finely wrought cameo.

Professor Treat divides his work into three parts: China to 1895, Japan to 1895, and The Far East, 1895-1927. Parts I and II contain introductory accounts of the physical, racial, cultural, and political background of China and Japan. The early intercourse of both nations with Europeans is described briefly. The background chapters are particularly good, prepared as if they were for the American collegian, or general reader, whose spirit is strong (sometimes), but whose flesh too often weakens at the thought of attacking masses of difficult names and strange institutions. Factually, the book as a whole is almost beyond criticism; the fault—if fault there be—lies in the interpretation of certain of the facts. In dealing with China the author is commendably objective and impartial. It appears to this reviewer that he is less so in his account of the steps by which Japan rose to world power. Professor Treat takes an almost parental pride in describing the growth of an infant prodigy, and when the prodigy unwittingly makes mistakes we are assured that that is a phase through which all children pass. And when Japan consciously (if not conscientiously) does what it ought not to do, there is an almost episcopalian air of respectability in the way in which we are reminded that we are all miserable sinners and that there is no moral health in any of us. With a sublime disregard for Japan's sixteenth century relations with Korea, the Philippines, and China, it is hinted that imperialism is a disease which the Japanese contracted from westerners.

In the accounts of the steps by which Japan annexed Korea, and of the making of the twenty-one demands upon China in 1915, there is a probably unconscious tendency on the part of the interpreter to gloss over the realities of the two situations. On page 387 we find this apology for the first: "And having entered upon two wars because of the inability of Korea to defend herself, Japan very properly insisted that this should not happen again." And so, equally properly, after proclaiming "her policies of independence, reform, and the open door" (p. 387), Japan swallowed her disgustingly defenseless neighbor. After she had spent five years in partly digesting Korea and had thereby artificially enlarged her digestive tracts, she served her twenty-

one demands on China looking toward a repetition of history in that country, which appeared equally incapable of self-defense. On page 462 we are told: "It is hardly necessary to give the text of the demands here, because, with the exception of certain of the treaty provisions relating to Manchuria which have already been discussed, they have lost their effect. The resentment which they caused, and its effect upon Sino-Japanese relations, are the really significant feature of the episode." We wonder.

With the exception of the unfortunate tendency just mentioned, there is nothing but praise for Professor Treat's painstaking work, which includes good maps and a splendid bibliography.

Mr. Roosevelt's volume, like Mr. Treat's, starts with a geographical orientation. In six parts and twenty chapters, Mr. Roosevelt states the problem of "conflicting tendencies of the nations in the Pacific": the geography of position, the geography of production, the conflict of policies, the imponderables, and the balance of power in the Pacific. There is not a trace of sentimentalism in this extremely realistic approach to the problem of the Pacific and the Far East. No American can remain Europocentrically minded after reading and cogitating upon the principles set forth in *The Restless Pacific*. The thoughts of Seward, Hay, and Theodore Roosevelt appear on the first page of Chapter I and serve as a spring-board for the author's dive into the not-very-pacific Pacific maelstrom. The unrest in Russia, China, Japan, India, the Dutch East Indies, and the Philippines is discussed; that it is the policy and to the interest of the British Empire, the Netherlands, and the United States to maintain the *status quo* in the Pacific is unhesitatingly asserted. Wisely does Mr. Roosevelt direct the attention of Americans to the fact that the very term "Far East" is a European one, and for us a misnomer—that in reality the Far East is not, from our point of view, the Far East at all, but the Near East. Chapter VIII, on the pressure of population, is one of the best analyses of this problem in the English language. Lacking a bibliography, the work nevertheless has a score of valuable maps and analytical diagrams.

Within The Walls of Nanking is small in bulk but packed with thought. In some fifty pages, Mrs. Ayscough gives us a masterly philosophic essay on the nature of China's civilization. The reviewer knows of no other account so concise, penetrating, and withal so complete. Mrs. Hobart's account of the taking of Nanking by the Nationalists on March 24, 1927, is not mainly an analysis of the mean-

ing of a movement, nor is it an historical account of the development of the movement itself. Rather is it mainly the breathless narrative of what happened in parts of Nanking during part of one day, and of symptomatic incidents in the months immediately preceding. It is, by all odds, the best account that has come out of China of the developments which took place in that unhappy country during the years 1926-27. It is not the type of book which ardent Chinese nationalists, Russian communists, or over-optimistic Americans will enjoy. It constitutes an unanswerable argument to those who advocate immediate abolition of extraterritoriality in China. It is written by two persons who know China—if such a thing is possible—and it will be appreciated by all students of the culture and foreign relations of that country.

HARLEY FARNSWORTH MACNAIR.

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Soviet Russia in the Second Decade: a Joint Survey by the Technical Staff of the First American Trade Union Delegation. Edited by STUART CHASE, ROBERT DUNN, and REXFORD GUY TUGWELL. (New York: The John Day Company. 1928. Pp. xii, 374.)

For a decade, Russia has been the happy hunting-ground of observers drawn from all walks of life—diplomats, journalists, business men, educators, novelists. Reports of the Soviet government's political, social, and economic experiments have ranged from extreme scepticism to extreme enthusiasm. The various observers have, in general, been handicapped by the brevity of their stay in Russia, their lack of first-hand knowledge of Russia prior to 1917, and their ignorance of the Russian language.

The members of the American Trade Union delegation who spent the summer of 1927 in Russia, while similarly handicapped, have brought to their studies a fund of solid technical information and a praiseworthy impartiality. Their reliance on statistics as a basis of comparison between pre-war and post-revolution wages and prices may be questioned, in so far as figures relating to agriculture are concerned; the figures relating to industry may be accepted with less caution, in view of the fact that nationalization has facilitated the collection of statistics in this field.

The chapters which offer the greatest interest are those devoted to industry, Soviet finance, labor legislation and social insurance, education, and foreign concessions. The conclusion reached by the

members of the Trade Union delegation is that Russia has emerged from the economic chaos of the period of civil war and intervention. The problem with which the Soviet government is now faced is that of effecting a balance of class interests as between town and village, and of preventing the emergence of economic aspirations which might threaten the union of the industrial workers and the poorer peasants. The solution of this problem is sought in the industrialization of a country primarily agricultural, and in the development of coöperative collectivism in the villages. The success of this experiment depends, on the one hand, on the possibility of securing sufficient capital, by means of credits and foreign concessions, and, on the other, on the elimination of the class conflict between the prosperous and the poor peasants by means of education and, if need be, repressive measures. In no modern state, perhaps, with the exception of Italy, has education been so definitely directed at the creation of a state of mind favorable to the experiments of the government. The significance of the mental transformation effected in Russia cannot be over-emphasized, and it may be regretted that the report of the Trade Union delegation, technically sound, does not reflect the fermentation of Russian thought.

VERA A. MICHELES.

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American Policy Toward Russia Since 1917. A Study of Diplomatic History, International Law, and Public Opinion. By FREDERICK LEWIS SCHUMAN. (New York: International Publishers. 1928. Pp. ix, 399.)

This interesting survey, the most complete story of Russian-American relations since the Revolution which has yet appeared, rests on documentation of very uneven value. Despite the author's access to some hitherto unpublished diplomatic correspondence of 1917 and 1918 in the archives of the Department of State, the amount of new material uncovered is not large. Although he has used extensively printed sources in English, Dr. Schuman appears to have read nothing in Russian, and to have relied largely on the *New York Times*, *Current History*, and the writings of journalists. Undaunted by the limitations of his sources, he ventures conclusions on many points on which adequate evidence seems to this reviewer not yet available.

In the sketchy treatment of Russian-American relations prior to 1917 reference is made to only one of Professor Golder's indispensable articles. The attempt to elucidate American intervention in Russia fails to emphasize the importance of the German victories in March, 1918, and the view, so forcibly expressed in the Allied appeals to the United States, that the war would be lost unless the Russian front could be reconstituted. Dr. Schuman's researches in the *Congressional Record* seem not exhaustive. He fails to mention Senator Borah's significant plea of July 13, 1918, for military as well as political intervention in Russia.

Allied and American intervention in Russia is summed up (p. 309) as "an ill-considered act of policy, wholly without justification in law, the failure of which subjects the governments involved to full responsibility for compensating the aggrieved party for the losses suffered from it." A chronological treatment of American policy is followed by an evaluation of the grounds upon which diplomatic recognition of the Union of Socialist Soviet Republics is withheld. Dr. Schuman argues in favor of recognition. "As to propaganda, the earlier fears that Soviet consular and diplomatic agencies would be made channels for its extension would seem to be no longer well-founded (p. 334). He concludes that to those who believe implacable war between capitalism and communism undesirable and avoidable, "the American policy toward Russia must appear worse than futility."

Dr. Schuman finds it "difficult to resist the temptation to condemn the triviality and futility" of the activities of the Root mission (p. 43). He dates the beginning of the Red Terror in September, 1918 (p. 107). The Harriman manganese concession, abandoned soon after his book was published, appeared to him "to be working to the satisfaction of both parties" (p. 252). Is it true that "the Russian Embassy at Washington declared its unqualified opposition to the lifting of the blockade" (p. 173)? Or that "abhorrence of Communism overshadowed all else" in the rejection of the Soviet proposal in 1928 for immediate abolition of all land, sea, and air armaments?

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The Work of the International Labor Organization. By the National Industrial Conference Board. (New York: National Industrial Conference Board, Inc. 1928. Pp. xii, 197.)

In 1922 the National Industrial Conference Board published, as

one of its Research Reports, an excellent study of the history, organization, and procedure of the International Labor Organization established by Part XIII of the treaty of Versailles. That early report has now been supplemented by a second study on *The Work of the International Labor Organization*. There is a short chapter on the structure of the Organization, but the burden of the volume is, as stated in the foreword, "a review of all proposals made by the International Labor Organization for the betterment of labor conditions" and "a discussion of the obstacles which made the adoption of internationally uniform labor standards difficult or impossible" (p. v). The survey here given of the work of this important international agency is unusually comprehensive in its scope and penetrating in its analysis, and to the textual discussion is added an appendix containing twenty-eight tables showing graphically the exact status of the several draft conventions adopted by the International Labor Conferences and of the domestic legislation applying the terms of these conventions.

The chapter entitled Summary and Conclusions provides an admirable review of the obstacles and difficulties confronting the International Labor Organization, and of its failures and successes in overcoming these obstacles. One may on occasion be inclined to differ with particular conclusions reached, notably with respect to the attitude of the United States (pp. 136-137), but on the whole these conclusions are reached only after the presentation of so much evidence, and are stated with such moderation, that one is impressed with their evident soundness. Without attempting to restate all these conclusions, one can best summarize the general view presented by the following quotation: "The agency so established by the Treaty has since grown extensively in its organization, its functions, and its significance in international labor relations. In many respects it may be considered the most vigorous and active section of the machinery of the League of Nations, or at least the most active agency of international organization. Created under exceptional, perhaps abnormal, circumstances, it has shown its ability to survive and grow and assume a real place in the increasing manifestations of international life" (pp. 3-4).

These two reports by the National Industrial Conference Board (the present one and the earlier report of 1922) together constitute perhaps the most important study, in the English language, of the International Labor Organization.

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BRIEFER NOTICES

AMERICAN GOVERNMENT AND CONSTITUTIONAL LAW

The Development of Governmental Forest Control in the United States, by Jenks Cameron (Johns Hopkins Press, pp. viii, 471), is one of the most recent studies in administration prepared under the auspices of the Institute for Government Research. Unlike most of the other volumes, which have been of a somewhat technical nature, this book is written in a semi-popular style and not only weaves the intricate details of American forestry legislation and administration into a readable story but dramatically portrays the important part which forests have played in American life and history. In the words of the author, an "attempt has been made . . . to get down beneath the landscape gardening of propaganda to the bed rock of 'things as they are,' and to tell exactly the tale of a particular American development that has been from first to last a cross-section of American development in general." In the opinion of the author, the Clarke-McNary Act passed in 1924 gives the nation at last the real beginning of a genuine forest policy. On the practical side, the act merits praise because of the enlarged possibilities of coping with the fire problem, and because of the clauses "aimed at the encouragement of forest-growing by a solution of the tax problem, as well as those designed to foster forest production and protection by the farmer, the owners . . . of one third of the potential forest area of the country, . . . and those providing for the gradual inclusion within national forest areas of those portions of the public domain, and of certain of the governmental reservations, ascertained to be primarily of forest value." Of greater importance is the fact that the Clarke-McNary Act represents a spirit of coöperation between diverse elements. Another of the series of studies in administration, of a more technical nature, is Henry P. Seidemann's *Manual of Accounting, Reporting, and Business Procedure for the Territorial Government of Hawaii* (pp. xxviii, 570). *The United States Civil Service Commission: Its History, Activities, and Organization* (pp. xii, 153), by Darrell H. Smith, and *The Food, Drug, and Insecticide Administration* (pp. xii, 134), by Gustavus A. Weber, are numbers 49 and 50 respectively of the Service Monographs of the United States Government issued by the Institute. These latter volumes are uniform in method of treatment with those which have previously appeared. The monograph on the Civil Service Commission will naturally be of more general interest.

Reports of two important committees of the National Municipal League have been published in pamphlet form. The committee on federal aid to the states has issued a report on *Federal Aid to The States* (pp. 40), prepared by its chairman, Austin F. Macdonald. The committee records "its belief that federal aid to the states is a sound principle of administration, and ought to be continued." The reasons for this conclusion are that federal aid (1) has stimulated state activity, (2) has raised state standards, (3) has been consistently administered without unreasonable federal interference in state affairs, (4) has accomplished results without standardizing state activities, (5) has mitigated some of the most disastrous effects of state politics, (6) has placed no unreasonable burden on any section of the country, and (7) that federal administration of the subsidies has not been influenced by partisan politics. Although unqualifiedly endorsing the principle of federal aid, the committee points out defects in the individual laws, and also suggests certain general changes that ought to be made in the interest of greater efficiency. Among the latter are the recommendations that certain bureaus should become more familiar with every detail of state work, and that others, while steering a middle course which will raise state standards and yet retain good state-will, should keep a more firm hand on the reins. Finally, it is recommended that Congress should make larger appropriation for the administration of federal aid. The second report is that on a *Model Municipal Budget Law* (pp. 8), submitted by a committee of the same name, of which Carl H. Pforzheimer is chairman and C. E. Rightor secretary. The draft of the proposed law is preceded by a brief summary of its chief features.

Among the last of the recent outpouring of books on political parties come two Macmillan publications. *The American Party Battle* (The World Today Bookshelf, pp. 150), by Charles A. Beard, is a thumb-nail sketch whose bold strokes block in only the most significant features of the political scene. Movements are observed from the economic viewpoint. The trees do not hide the woods; neither "principles" nor personalities obscure fundamental interests. "Wealth and talents," "dirt farmers," "mechanic-labor wings," and "lower orders" loom large, with judges, banks, battleships, tariffs, and income taxes filling in the picture. The book may well be described as a vest-pocket *Rise of American Civilization*. Quite different is *The Story of the Democratic Party*, by Henry Minor (pp. 501). A leader of conservative

Southern Democracy narrates with great particularity the events of his party's history. "Keynoters" and candidates, planks and ballots, are recorded in detail. Politicians and minor parties long since forgotten come in for passing reference. No pretention is made to original research or startling disclosure. If the *Story* has any hero, Cleveland seems to fill that rôle rather than Jefferson, Jackson, or Wilson. Though not always objective, much of the book is as unexceptionable as the *World Almanac*. For an interpretation, we may consult Beard; to locate a fact, we will turn to Minor.

The Macmillan Company has recently published *Documents and Readings in American Government* (pp. 928), by Professors John M. Mathews and C. A. Berdahl, of the University of Illinois. The book contains a wide range of useful materials covering the whole field of American government—national, state, and local. All are arranged in such form that they can be used to supplement any of the various available text-books. The distinctive feature of the volume is the strong predominance of official documentary material. For example, the chapter on "The State Constitution" contains a copy of the provision for a constitutional convention from the Illinois constitution, an opinion of the attorney-general of North Dakota concerning the powers of the legislature, a resolution of submission by the Illinois legislature, a governor's proclamation, a discussion of the procedure and rules of a convention from one of the *Illinois Constitutional Convention Bulletins*, an address of submission by the Illinois Constitutional Convention, and an article by Lawrence B. Evans on the Massachusetts convention of 1917-19, reprinted from this *Review*.

Teachers of American government will find an exceedingly useful aid to their work in *Working Manual of Original Sources in American Government*, by Milton Conover (Johns Hopkins Press, pp. ix, 167). This little volume, first produced in 1924, has now been revised and enlarged. Two new chapters have been added, dealing with political belles lettres and political theory; some additional material has been added to other chapters; and the whole has been rearranged on a somewhat more logical basis. There are numerous exercises and assignments, dealing with the important governmental activities in the United States and introducing the student especially to the documents that illustrate the active functioning of our political system. These documents include such as the President's message, reports of heads of departments, House and Senate documents, committee hearings,

the Congressional Record, United States statutes, and the like. Comparatively little attention is given to state and municipal government, but the author promises to remedy that defect by producing similar manuals for each of these fields. Unique in plan, comprehensive in scope, methodical in design, this manual should prove stimulating wherever library facilities are such as to permit its general use by students.

C. A. B.

The Constitution of the United States, by Bertha Moser Haines in collaboration with C. G. Haines (F. S. Crofts and Co., pp. 319), is an effective analysis of the Constitution and its antecedents, well suited to the needs of advanced high school classes or junior colleges. One third of its space deals with the colonial and revolutionary background of the Constitution; another third presents a brief but clear exposition of the provisions of the instrument; while the remainder is devoted to the "adaptation of the Constitution to the needs of the nation." This presents not only an analysis of the processes of constitutional expansion but a discussion of some important principles embodied in the American constitutional system. There are useful short bibliographies and problem assignments.

Persons interested in the technique of military administration will find much of value in *The Organization and Administration of the Union Army, 1861-1865*, by Fred Albert Shannon (two vols., Arthur H. Clark, pp. 323, 348). The work undertakes "to show how the Union changed from a peace to a war basis, to describe the evolution of the military policy and of the army, and to outline the interrelations of state and national governments in the solution of various problems of recruiting, equipping, supplying, and training the soldiers." Official records have been used extensively, as well as newspapers, magazines, memoirs, autobiographies, correspondence, diaries, and military histories. There are chapters on "the slacker problem," the conscientious objector, the state-rights principle applied to the army, the daily life of the soldier, and other interesting matters. The military control of railroads is not covered.

D. Appleton and Co. has added to its list of excellent biographies *Bryan: The Great Commoner*, by J. C. Long (pp. xv, 422). The author brings out the strong features and the accomplishments of Bryan as well as his weaknesses, picturesque qualities, and idiosyncracies. The result is an impartial but readable account of the stormy

career of the Peerless Leader, who was always in the thick of a fight, always crusading against some alleged wrong, and engaged in some kind of a conflict up to the day of his death. The author regards Bryan's contribution to his age as "primarily his belief in the inherent dignity of the common man," and his most lasting achievement as the arbitration treaties with thirty nations, which, moreover, were ratified without serious dispute by the Senate. One cannot help wishing, however, that Bryan's career had not ended with such an anti-climax as the Dayton fiasco.

Readings in American Citizenship, by John T. Greenan (Houghton Mifflin Co., pp. 436), is a volume of excellent selections covering a wide range and well adapted for collateral reading in the secondary schools.

Messrs. Ginn and Company have issued a new school text-book, *Community and Vocational Civics* (pp. 750), by Howard C. Hill. It is broader in scope than most books of its type and is marked by the good workmanship which has characterized Professor Hill's earlier writings.

STATE AND LOCAL GOVERNMENT

Public utilities and their regulation engages the attention of Professor O. C. Hormell in two pamphlets which deserve the attention of anyone interested in that important and complicated subject. *Maine Public Utilities* (Bowdoin College Bulletin No. 164, pp. 69) discusses the governmental problems growing out of the public utility situation, the historical development of utilities in Maine, the public utilities commission and its work, rate regulation, valuation, and the special questions arising in connection with water power, especially the transmission of hydro-electric power beyond the limits of the state. If the state is to "escape the exploitation of highly centralized monopolies on the one hand, or government ownership on the other," Professor Hormell points out that the supremely important duty of regulation should not be imposed upon a commission that is overburdened with work and supported by a staff that is both undermanned and underpaid. The author's second contribution is *Electricity in Great Britain: A Study in Administration* (supplement to the *National Municipal Review*, Vol. xvii, No. 6, pp. 363-385.) The study is the result of an investigation conducted by the author in England during the spring and summer of 1927 and explains the principles and workings of the

Electricity (Supply) Act of 1926, which competent authorities have considered as "undoubtedly the most important" among the measures passed by Parliament in 1926. The act creates "power zones approximately coterminous with the several great industrial districts," provides for the interconnection of the zones as rapidly as possible and the regulation of prices both to distributor and consumer, attempts to standardize frequency in order to bring about "an economical flow of electrical energy throughout the nation-wide net-work of transmission lines," and sets up a "state agency to reform and regulate the generation and transmission of electricity, and to coöperate with existing agencies in putting into effect the reorganization of the electrical industry."

The Division of Building and Housing of the United States Department of Commerce has extended its valuable work in the promotion of city planning by issuing *A City Planning Primer* (pp. 18), *A Standard City Planning Enabling Act* (pp. iv. 54), *A Survey of City Planning and Related Laws in 1927* (pp. 10), and *A Preliminary Tabulation of City Planning Commissions of the Larger Cities in the United States* (pp. 23). The first pamphlet explains the need for city planning, the main features of a city plan, the execution and financing of a plan, and the problems of regional planning. The second bulletin not only contains the text of a model city planning enabling act, but also includes numerous footnotes and explanations for the purpose of adjusting the act to local conditions. Both of these publications have forewords by President-elect Hoover. Another recent publication of the Division of Building and Housing is a mimeographed study, *Zoning Progress in the United States* (pp. 46), which includes in Part I an excellent discussion of "Zoning and the Courts," by Edward M. Bassett, and in Part II a detailed list of zoning laws and ordinances enacted throughout the country. Frequent supplements are issued bringing the information regarding the progress of zoning and city planning down to date.

The publication of *A Report on the Street Traffic Control Problem of the City of Boston* (pp. xv, 435), prepared by the Albert Russel Erskine Bureau of Harvard University under the direction of Dr. Miller McClintock, while following the same general plan as the surveys made for Chicago and San Francisco (noted in the *Review*, vol. xxi, p. 693; vol. xxii, p. 496), presents certain new features. A large part of the study is devoted to the flow of traffic, and somewhat

more attention is given to the problems of administration than in the earlier reports. The Boston survey also was more complicated because of the fact that the streets are extremely narrow and the street pattern more irregular, while the city itself is the center of a metropolitan district studded with about thirty-nine other cities and towns.

An interesting report on *The Coroner and Medical Examiner* (pp. 101) has been published by the National Research Council. This is the result of a detailed survey by Professor E. M. Morgan, of the Harvard Law School, and Dr. Oscar T. Schultz, acting under the auspices of a committee on medico-legal problems. Detailed surveys were made of the workings of the coroner system in New Orleans, San Francisco, and Chicago, and the results were combined with material from former surveys of the coroner system in New York City, Cleveland, and Missouri. The coroner system has been compared with the medical examiner system in New York City and Boston, to the distinct advantage of the latter system. The report recommends that the office of coroner be abolished and that of medical examiner established with a competent staff, and that the non-medical duties of the coroner's office be vested in the appropriate prosecuting and judicial officers.

Recent publications of the League of Minnesota Municipalities deal with *Tax Rates, Assessed Valuations, and Public Indebtedness in Minnesota for 1928* (pp. 32); *Fire Department Statistics in Minnesota for 1928* (pp. 16); and *Fire Protection and Fire Prevention Ordinances* (pp. 12).

The Proceedings of the Tenth and Eleventh Country Life Conferences held in 1927 and 1928 have been published by the University of Chicago Press (pp. 161). The portions of greatest interest to students of government are the report on rural health and sanitation by Walter Brown, the address on tax legislation by Charles L. Stewart, and that on benefits from taxation by M. H. Hunter.

Students of rural local government will derive some help from Part V of Newell L. Sims' *Elements of Rural Sociology* (Crowell, pp. xiv, 698) devoted to "The Structural Element" and constituting about one-fourth of the book. This part deals with the organization of the rural community, past and present.

FOREIGN AND COMPARATIVE GOVERNMENT

Le Status des Dominions Britanniques en droit constitutionnel et en droit international, by Edmond-Edouard Buchet (Recueil Sirey, Paris, pp. 138), is a doctoral treatise compiled largely from the available secondary sources. It is an elementary, and in places a superficial, résumé of the development of the status of the dominions in the British Commonwealth of Nations that was recognized by the formal Balfour Committee's report in the Imperial Conference of 1926. The value of the book lies in adding to the work of A. B. Keith, H. D. Hall, Lionel Curtis, P. Hurd, R. Jebb, and other British commentators a bibliography and a partial digest of articles which have appeared since the war. The treatment is purely legalistic, although the author recognizes the divergence of law and practice. As an analysis it is clear and logical, but it illustrates by an excess of those virtues the difficulty which the French have in conceiving adequately the muddled working of British institutions. No detailed study seems to have been made of the present functioning of the Judicial Committee of the Privy Council, of the questions raised by the vice-regal status of the governors-general and the status of the governors in the Australian states, nor of the functions which the governor-general must fulfill on the "native questions" commissions in South Africa, or the method of amending the British North American Act in the future.

W. Y. E.

Les Editions Rieder have published a second edition of their valuable little *Manuel des Partis Politiques en France* by G. Bourgin, J. Carrère, and A. Guérin (pp. 302). It will be recalled that the first edition was offered to "... those Frenchmen who have the commendable desire to see clearly the issues of the electoral battle." It was the feeling of the authors that in order to accomplish this end they ought "to compare the programs and tactics" of the different parties. Similarly, this second edition is offered to these self-same voters in 1928, enlarged and brought up to date. At the same time, it is supposed to be an *instrument du travail* for the historian of France and of the parliamentary régime. As before, the study deals, in five parts, with the Right extremists and the great organizations outside of the strict party organization. In each case, it treats the various sub-groups in special paragraphs, taking up history, program, and structural organization. In another edition it might be worth while to give a few general data regarding the relative strength of these

groups and their distribution in the country. Though students of political problems in the United States may feel a little sceptical about the significance of platforms and programs in modern party struggles, they will welcome this authoritative guide to the masks, if not the real *dramatis personae*, of the French political pageant of today.

C. J. F.

My War Memoirs, by Eduard Beneš (Houghton Mifflin Co., pp. 512), is an English translation from the original Czech edition of the author's war recollections. Much of the material of minor or local interest has been omitted, and the leading motives of the story have in this way been brought out more forcefully. Beneš needs no introduction to the historically-minded public, but the reader may be reminded that this volume, like Masaryk's larger *World Revolution*, belongs not only with the prime sources for the history of Czechoslovak resurrection, but also with the best and most interesting war literature in the broader sense. The Czech leaders were men of high culture and lofty ideals, and they played a part in the story of the great conflict which was almost out of proportion to the issue involved. The book reflects the author's attractive personality, and is written with unusual grasp and understanding. A man like Beneš, writing on an epic subject, could hardly fail to produce a narrative of importance, interest, and fascination.

The Verlag R. Oldenbourg has just published a seventh edition of Friedrich Meinecke's now famous *Weltbuergerium und Nationalstaat* (pp. x, 558). That such a book should see a seventh edition is in itself proof of its importance. Few books have made such a profound impression upon the younger generation of German historians. The main addition of the present new edition is to be found in the chapter dealing with the constitutional convention of 1848, which contains material of the constitutional drafting committee that has become available recently through the publication of the political papers of Droysen.

C. J. F.

The New Democratic Constitutions of Europe, by Agnes Headlam-Morley, is among recent publications of the Oxford University Press (pp. 298). The book deals with the historical origins of these new constitutions and with various topics in the structure of government, treated in a comparative way. Of special interest and value are the discussions relating to universal suffrage and proportional repre-

sentation, second chambers, and economic councils. There is a useful bibliography.

Sir John A. R. Marriott has written a small volume on *How England is Governed* (Oxford University Press, American Branch, pp. 112) which aims to give a brief and up-to-date account of the government of Great Britain, together with a short chapter on the Empire. The author not only gives the present-day facts about English political institutions, but traces their origin and development.

INTERNATIONAL LAW AND RELATIONS

The Royal Institute of International Affairs continues its valuable work in publishing the *Survey of International Affairs, 1926* (Oxford University Press, American Branch, pp. 565), by Professor Arnold J. Toynbee, aided by R. J. Stopford, H. Lauterpacht, and M. S. Birkett. This volume completes the survey of international events between 1918 and 1926 begun in other volumes, and for China carries events to February, 1927. Part I deals with world affairs, emphasizing the League of Nations and the attitude of the United States toward the League and the World Court as well as toward war debts and reparations. In Part II attention is particularly given to southeastern Europe, though the international steel cartel is also considered. In Part III more than two hundred pages are given to the Far East and the Pacific. Here the Chinese civil war, with struggles in regard to tariffs, extraterritoriality, denunciation of treaties, Soviet influence, etc., are discussed. The problems of Japanese foreign policy when facing China on one side and the western nations on the other are shown, together with the reversal in recent years of Japan's former aggressive attitude toward China. The World War transformed the Pacific "from a zone of international insulation into a field of international tension," as was recognized in the Washington Conference of 1921-22. Changes in the Philippines are interpreted broadly and the disturbances in India well described. Brief reference is also made to Chinese immigration in the tropics. Appendices contain supplementary material and an excellent chronology of events and treaties. There is a good index, and there are five serviceable maps.

The second edition of Professor Graham H. Stuart's *Latin America and the United States* (The Century Co., pp. viii, 465) has been revised and expanded more than sixty pages to include material cover-

ing the past six years. New interpretations of the Monroe Doctrine have been noted and commented upon, the chapters dealing with Mexico and the countries of the Caribbean have been considerably enlarged, and the recent phases of the Tacna-Arica dispute have received special attention. The author concludes that "from the hitherto unsatisfactory results of acting in the rôle of peacemaker President Coolidge might begin to question whether it would not have been fairer to him if such a problem had been turned over to the World Court for a decision and to the machinery of the League of Nations to make the decision effective" (p. 408). Closing the ten pages devoted to the Fifth and Sixth International American Conferences, Professor Stuart declares that the representatives of the Latin American states could leave Havana "with the assurance that they had at last come into their own as equal participants in the fraternity of American nations" (p. 29). Although the Harding administration "made a unique record in its efforts to settle a number of outstanding and thorny disputes in the Caribbean area" (p. 6), "unfortunately, the Coolidge administration has not been able to point with pride to the results of its dealings with its Latin American neighbors. Neither by training, experience, nor temperament was Secretary Kellogg suited to handle the delicate problems which faced the United States in Mexico and the Caribbean" (p. 7). Although the lists of supplementary readings have been revised, Perkins's *The Monroe Doctrine*, Hill's *Roosevelt and the Caribbean*, and Dennis's *Adventures in American Diplomacy* are not included.

J. P. B.

The Law of Nations: An Introduction to the International Law of Peace, by J. H. Brierly (Oxford University Press, American Branch, p. 222), although not pretending to be anything more than an introduction, and written with the object of giving the general reader who desires to learn something about international relations an idea of the subject, is a work which the advanced student can read with profit. Its value rests not only in the statement of the fundamental principles of international law in a clear and concise manner but in the fact that the author remains in the domain of international realities and does not soar into the clouds of academic internationalism. As Mr. Brierly states, "the law of nations is . . . just one institution among others which we have at our disposal for the building up of a saner international order." His final chapter on international organization deserves special mention. He emphasizes the value and func-

tions of such organizations as the International Telegraph Union and the Universal Postal Union and points out that "the creation of the League of Nations, therefore, in 1919, was not the introduction of a wholly new principle into international life but the logical outcome of a movement which had been gathering force for many years. It is distinguished from the previous steps in this movement by its generality." When one recalls the harm which has been done to the League of Nations in the United States by the extreme claims which some of its enthusiastic but misguided academic friends have made for it, one may be pardoned for emitting a sigh of relief at Mr. Briery's statement that "the League is not a power outside of or above the states which compose it, but an institution which they have set up themselves, and which they can use or not, and use well or ill, as they think fit."

E. C. W.

The World Book Company has brought out a fourth edition of Isaiah Bowman's *The New World: Problems in Political Geography* (pp. v, 803), which has been completely revised to conform with the events since 1921 when the first edition appeared. To make room for the large number of maps, of which there are 257, and for a discussion of recent treaties, the photographs which appeared in the early edition have been omitted. In order to provide a better understanding of the major problems raised in connection with the various countries and regions, the first chapter contains a discussion of such matters as mandates and colonies, debts and reparations, raw materials, the distribution of land, communication and transit, limitation of armaments, minority populations, boundaries, and international relations. The work forms a rich background for teachers and students of foreign governments and international problems. Another useful tool which emphasizes geographical factors is a syllabus on *The History of the Americas* (Ginn and Co., pp. xxii, 314) by H. E. Bolton, director of the Bancroft Library at the University of California. This syllabus "presents a general survey of the Western Hemisphere from the discovery to the present time." In this way the history of the United States is put in a new setting.

The Doctrine of Necessity in International Law, by Burleigh C. Rodick (Columbia University Press, pp. 146), does not restrict itself to any one part of international law or to any period. In scope, it embraces the entire field, its premises being built upon juristic data

running back to Grotius. The author has succeeded, if his aim is that of merely indicating the tremendous extra-legal force wielded today by states under the guise of necessity. But merely touching, as it does, on such broad fields as national jurisdiction, pacific intercourse of states, and military necessity, the work contains serious gaps. For the reasonable conclusions reached the reader wants assurance in the form of substance. In dealing, for instance, with the amount of legal validity possessed by any doctrine of necessity, some space should be devoted to considering whether necessity is not anterior to any system of law, and whether necessity does not, in practice, form the precedent which in due course of time grows into usage and ultimately becomes part of the law of nations. In proposing, as a conclusion, that the doctrine of necessity as a legal principle be confined strictly to circumstances expressly covered by law, the author, in effect, gratuitously bestows upon jurists the colossal task of first codifying the entire field of international law.

The Naval War College has recently published another of its valuable studies on *International Law Situations, with Solutions and Notes*. The particular situations discussed in this latest volume, which is that for 1926 (Government Printing Office, pp. vii, 124), relate to continuous voyage, the use of submarines, the right of angary, and the status of aircraft in neutral ports. As in previous years, the discussions in 1926 were led by Professor George F. Grafton Wilson, and constitute an important contribution to an understanding of what may be practical application of certain doctrines of international law.

C. A. B.

Graf Benckendorff's Diplomatischer Schriftwechsel, edited by B. von Siebert (Berlin and Leipzig: Walter de Gruyter and Co., three volumes), represents the last stage in the history of the well-known De Siebert documents, which first appeared in book form under the title *Diplomatische Aktenstücke zur Geschichte der Ententepolitik der Vorkriegsjahre*, and in English translation as *Entente Diplomacy and the World*. In this definitive edition the late De Siebert has omitted all the correspondence of Isvolski, which can now be found in other collections, but has revised the translation of the correspondence between St. Petersburg and London and has added over three hundred documents which have not hitherto been published. Many of these are of little value, but the one hundred and eighty-odd documents

dealing with the London Conference of 1912-13 are of great interest and importance. These alone would make the new edition valuable to the historian. It is greatly to be regretted that there is no indication as to what is new in these volumes; the scholar is left to work it out for himself. On the other hand, the rearrangement of the entire material in chronological order is an improvement which makes this edition far more usable than the old one. W. L. L.

Ten years after the armistice, William Martin, foreign editor of the *Journal de Genève*, presents a pageant of *Statesmen of the War: In Retrospect* (Minton, Balch and Company, pp. xiii, 369) in which some twenty-three leaders of the war period move across the stage. Each one is made to reënact his part while the author gives a brief curtain talk interpreting the actions of each and appraising his character and achievements. The author includes not only the outstanding figures such as William II, Francis Joseph, Nicholas II, Poincaré, Lord Grey, Briand, Hoover, Wilson, Lloyd George and Clemenceau, but Jon Bratiano of Rumania, who "finally became entangled in his own subtleties;" Colonel House, "a disinterested man" with "a thirst for power;" Gustave Ador of Switzerland, who is described as "the incarnation of peace;" President Masaryk and Dr. Beneš, "two statesmen really worthy of the name;" Paderewski; and Pachitch of Serbia, who "ruled his little nation with a rod of iron." The book is written in a very interesting style and with a thorough understanding of the figures and events of the period. It is not merely another book in the great flood of post-war literature, but a volume which has a distinctive value because of its general fair-mindedness and keenness of interpretation. The fact that the author is Swiss helps explain this.

The Hungarian-Rumanian Land Dispute, by Francis Deák (Columbia University Press, pp. ix, 158), although written with a definite purpose in mind, not only presents a study of Hungarian property rights in Transylvania under the treaty of Trianon but also considers issues which will be of great interest to the student of international law. Rumania objected to the jurisdiction of the mixed tribunal set up under the treaty, and upon the objection being overruled, the Rumanian member withdrew and his government declined to proceed. The resolution of the Council of the League of Nations at its session of March, 1928, providing that the Council should name two additional members of the tribunal, while the Rumanian mem-

ber should be "restored," and Rumania's refusal to agree to such arbitration save on the condition that the two supplementary judges should be bound in advance by certain rules, are discussed in critical terms by Dr. Deák. The issues involved present "two fundamental questions . . . which obviously carry more import in relation to the progress of international law in general than they do in relation to the contentions of the parties to the particular controversy" (p. 158). The two questions are as follows: 1. "How far, if at all, can the Council of the League of Nations interfere with the administration of international justice?" 2. "In case such interference takes place, what effect will this interference have on the development of international arbitration?"

E. C. W.

China and World Peace, by Mingchien J. Bau (Revell, pp. 194), in the words of its author, aims "to review the main factors in the arena of Chinese international politics since the Washington Conference, to treat of the leading issues involved in the situation, and to point out a way for the readjustment of China's foreign relations, with a view to hastening China's entrance into the family of nations as a full equal, averting any unnecessary conflict of ideas, policies, and forces, thereby in a small way promoting world peace." The important chapters are on unequal treaties, Chinese nationalism, the new British policy in China, tariff autonomy, extraterritoriality, concessions and settlements, and readjustments of China's treaty relations. Another recent book of a more popular nature is *The Soul of China*, by Richard Wilhelm, translated from the German by J. Holroyd Reece (Harcourt, Brace and Co., pp. 382). The book is made up largely of the author's impressions in his travels; but at the beginning of the volume there is an interesting account of recent political changes in China, and more especially of the modern writers and reformers whose ideas have influenced these changes.

International Economic Relations, by John Donaldson (Longmans, Green and Co., pp. 674), is a useful study not only in the field of economics but for any comprehensive survey of international relations. Part I takes up in conventional form the physical and social elements which are supposed to form the basis of the international economic order. Part II embodies an ambitious attempt to build up a "structural and industrial basis of international relations." The chief contribution of the work lies in its survey of those economic problems

which today possess international significance, such as the chapters on economic access, world trusts, monopoly and interdependence of essential materials, petroleum and diplomacy, and the international character of the bases of industry. Not so reassuring is the attempt to evolve a "world economy" of an organic nature, based on world industry, world trade, world shipping, and world finance. An undue strain is here in evidence, with economic impulses and factors stretched to cover the world economy which the author endeavors to establish. John Carter's *Conquest; America's Painless Imperialism* (Harcourt, Brace and Co., pp. 348) is an interpretation of American imperialism featuring peaceful conquest in contrast with the political and military conquest of the old world order. In popular form, the author considers the basis of American world power, the struggle between America and Europe, and the future of American expansion.

Professor Toynbee admits that the title which he has given to a small volume, i.e., *The Conduct of British Empire Foreign Relations since the Peace Settlement* (Oxford, pp. 126), is "a long and rather clumsy" one. It is, however, descriptive, and the Royal Institute of International Affairs has justly thought the volume worthy of publication in its series. The constitutional aspects of the recent changes in the conduct of foreign relations consequent upon membership of the states of the British Commonwealth of Nations in the League of Nations, their diplomatic representation in foreign states, and their influence upon general foreign policy are well and briefly presented.

The Stafford Little lectures for 1928, delivered by Charles Evans Hughes on *Our Relations to the Nations of the Western Hemisphere*, have been published by the Princeton University Press (pp. 124). The latter portion of the book deals with general plans of arbitration and the prospects of international organization.

The first volume issued by the Institut Français de Washington is *The Treaties of 1778 and Allied Documents* (pp. xxv, 70), edited by Professor G. Chinard, with an introduction by Dr. James Brown Scott, and published by the Johns Hopkins Press in a format worthy of the subject. The text of the treaties reproduces the original manuscripts in the Department of State.

Dr. Milton Offutt has reviewed briefly and favorably the many cases in which it has been found necessary, or has been believed to be de-

sirable, by the United States to use its armed forces, particularly the navy and the marines, on foreign soil. His survey appears in the Johns Hopkins University Studies in Historical and Political Science, under the title *The Protection of Citizens Abroad by the Armed Forces of the United States* (Series LXVI, No. 4, pp. viii, 170).

In three lectures published by the University of Pennsylvania Press under the title *American Diplomacy in the Modern World* (pp. vi, 127), Arthur Bullard seeks to demonstrate that the "new mechanism at Geneva is as much superior to former methods as the new Ford is to the pre-war model."

The international aspects of the opium trade and the various attempts at restriction are the subject of a very thorough study by Michel Liais entitled *La Question des Stupéfiants Manufacturés et L'Oeuvre de la Société des Nations* (Paris, Société du Recueil Sirey, pp. 208).

POLITICAL THEORY AND MISCELLANEOUS

The work of one of the most important English thinkers of today is summarized in *The Social Theories of L. T. Hobhouse*, by Dr. Hugh Carter (University of North Carolina Press, pp. 137). Dr. Carter has performed a real service. Although the works of Hobhouse are available, the rich variety of his contributions, scattered as they are through many volumes, and including significant contributions to psychology and to anthropology, as well as to political philosophy, ethics, and the development of social institutions, makes a summary of considerable value. And this is particularly true of a book addressed, no doubt, primarily to American readers, who are, as Dr. Carter notes, far less familiar with the work of Hobhouse than his importance warrants. The reason, doubtless, is the one surmised by the author of this critical study: Hobhouse is, among positivistic American political scientists, under the dreadful suspicion of being a philosopher, and of having been guilty of heresy against the academic separation of disciplines that a growing specialization has produced, and that now is treated as sacrosanct. Yet it is precisely his wide and sound acquaintance with many allied fields of social studies that makes Hobhouse an outstanding social philosopher. In the opinion of the reviewer, he is a far more important figure than Dr. Carter's study would indicate—perhaps the soundest and best equipped social theorist in the English-

speaking world. That is a large claim, and it may indicate some of the grounds on which Dr. Carter's study, competent as it is in some respects, seems wanting in powers of interpretation, because of a lack of adequate philosophical perspective. The reviewer would suggest a somewhat different interpretation and estimate, particularly of such contributions to politics as *The Metaphysical Theory of the State* and the classic little volume, *Liberalism*.
W. Y. E.

Persons concerned with political measurements will be interested in the last part of F. Stuart Chapin's *Cultural Changes* (Century Co., pp. xix, 448). Professor Chapin suggests that there is some evidence that political institutions, like other cultural forms, pass through stages of growth or integration, maturity or equilibrium, and decay or disintegration. Applying this principle of cyclical change to social and political institutions such as poor relief legislation and administration, commission government, and the city-manager plan, Dr. Chapin shows that, first, as a changing order occurs, a strain is created which leads to the enforcement of certain mores or ideas, next comes a period of special legislation of a trial-and-error or experimental type, and finally general legislation that integrates successful group practice. Considerable space is given to a discussion of the part which invention has played in cultural change, and the eleventh chapter considers political inventions with special reference to the commission form of government and the city-manager plan. In the twelfth chapter the growth of social activities is studied, using the extension of governmental functions in Detroit and Minnesota and the growth of the city manager and commission government throughout the country as examples. There are numerous charts and graphs illustrating these facts. From all of this data Dr. Chapin suggests certain tentative hypotheses regarding the extent to which we may predict the future course of governmental institutions and the nature of institutional growth, with the hope that further research will lead to verification, modification, or rejection of such hypotheses. The book is stimulating and merits special consideration by political scientists.

Alfred A. Knopf has brought out the second volume of Oswald Spengler's *The Decline of the West* (pp. 507). One might as well try to write a critique of modern society in a few hundred words as to attempt a summary of Spengler's great essay on a morphology of world history. The fundamentals of his philosophy were laid down in the

first volume, published in translation some two years ago. This second volume, stated briefly, represents the application of the theory to the actual facts. Spengler surveys the history of cultures in its various essential aspects, laying great stress upon the history of Arabian culture. He draws a sharp distinction between the life of primitive man and the life of the later stages, and sees in the appearance of the great city centers the beginning of the end. It is quite natural that the discussion of the state and its composition, as well as the relation of the individual to the state, should take up a large part of the volume, and that the whole intricate economic organization of society should be subjected to close scrutiny. Here, as in the case of the first volume, exception can undoubtedly be taken by experts to innumerable statements and interpretations of the author. But there can be little doubt that Spengler's work will stand as one of the most daring and stimulating excursions into the field of social critique and the philosophy of history. It is particularly fortunate for the English reader that a book of such importance should have been so competently translated by Mr. C. F. Atkinson and so attractively made by the publisher.

W. L. L.

Leon Guérard has, in *The Life and Death of an Ideal: France in the Classical Age* (Scribner's, pp. x, 391)—a somewhat cumbrous and not very revealing title—written what is, in effect, a sketch of the French spirit as displayed chiefly in French literature from the Renaissance through the Revolution. It is divided, naturally, into sections on the sixteenth, the seventeenth, and the eighteenth centuries; and, without being a catalogue and an appreciation of the various writers and schools of writers in those periods, it sometimes comes perilously near to that method of approach. Indeed, dealing as it does with such a multitude of names, it is difficult at times to avoid that snare of the manual writer. None the less it is an entertaining and, generally speaking, a readable volume, generous toward the classicism which it chronicles, friendly toward the scientific spirit, bitterly opposed to that ignorant sentimentalism to which Rousseau gave vogue and which is now so rampant among us. To one reader, at least, the sections dealing with the so-called "philosophers" of the eighteenth century seem the most interesting; yet there appear, even in that, certain omissions or slight treatment which rather weaken the effect of the whole. For, after all, why should Weisshaupt be given space and the Physiocrats be virtually neglected? And was Napoleon the "supreme classicist?" There is a

brief bibliography, a chronological summary, and an adequate index, which add to the utility of the volume as an introduction to its subject.

W. C. A.

Ernest Barker's inaugural address at Cambridge University has been published in a little booklet entitled *The Study of Political Science and its Relation to Cognate Studies* (Cambridge, at the University Press, pp. 51). The relations to history, law, psychology, and economics are considered, but it is clear that Barker regards the affinity with philosophy, especially moral philosophy, as the most enduring and enamoring. "As I see it," he says, "political theory is primarily concerned with the purpose, or purposes, which man proposes to himself as a moral being, living in association with other moral beings, who at once desires and is forced to pursue his purpose or purposes in the medium of a common life. It is a study of ends, and of the modes of realization of those ends; and since ends have supreme value, and determine the value of other things which serve as their means, it is a study of value or values. Here it may be said to touch the sister science or theory which is called economics Economics and politics thus run up together into philosophy; and moral philosophy (or moral science) is the basis, or apex, common to both. . . . It is here, and in this conception of political theory as moral philosophy applied to the life of the whole community, that Plato and Aristotle still remain masters."

Now that China is fighting for jurisdictional rights and attempting to establish a system of government and law, it is interesting to learn the ideas of early Chinese thinkers concerning law. One of the best discussions of this subject is found in *The History of Political Theories of the Early Ts'in Dynasty*, by the famous scholar and statesmen Liang Ch'i Ch'ao. The chapters of this work dealing with the early conception of law have been made available for students of the western world in a French translation by Jean Escarra and Robert Germain entitled *La Conception de la Loi et les Théories des Légistes à la veille des Ts'in* (Chinese Booksellers Ltd., Peking, pp. xxxvii, 82). The work explains the ideas of a school of statesmen and philosophers in China known as the Legists "who for a time overshadowed Confucianism and helped by their thinking the formation of China's first autocratic empire in 220 B.C. It is curious to find how close their ideas stood to the Greco-Roman conception of law and how opposed they were to the

traditional Chinese attitude." Reading of this conflict, "the thought occurs that had the Legists, defending the method of government by law, triumphed over those who fought for government by natural order, China's long history would have run a quite different course." The translators have added many notes explanatory of the text, and there is an introduction by M. Escarra giving a short and clear summary of the traditional concept which the Chinese have of law and of the conflict between law and the "rites" which stand for the natural order of things. In an appendix are collected various useful historical and bibliographical data.

Grain Growers' Coöperation in Western Canada, by H. S. Patton (Harvard University Press, pp. 471), is of special interest in view of the present discussion concerning farm relief legislation in the United States. The author not only explains the coöperative movement but tells of the part which the various organizations have played in the passing of important federal and provincial legislation, and in assuming the responsibilities of administration in three of the provinces. In the opinion of the author, actual participation in large scale business and finance and in the responsibilities of government has had "a sobering, educative effect, which has tended to make the attitude of the western farmers as a class toward other economic groups and institutions less one of suspicion and antagonism, and more one of intelligent accommodation."

A new edition of *Pages Choisies de Jean Jaurès*, with an introduction and notes by Paul Desanges and Luc Meriga, has been published (Les Editions Rieder, Paris, pp. 288). The book contains selections from the writings of the famous French socialist on various subjects such as socialism and liberty, a résumé of the principles of socialism, popular education, forces for peace, internationalism, art, and socialism, and a series of historical portraits, including sketches of Mirabeau, Marat, Hébert, Danton, and Robespierre.

A new edition of G. Lowes Dickinson's *Revolution and Reaction in Modern France*, a notable book long out of print, has been published by Brentano's (pp. 256). In this new edition the concluding chapter has been condensed and partly rewritten.

A third edition of Walter Dill Scott's *Influencing Men in Business*, revised and enlarged by Delton T. Howard, has been issued by the

Ronald Press (pp. 172). Dealing, as it does, with the methods of making arguments and suggestions effective, the book contains pointers for the politician as well as for the business man.

Seven lectures delivered at the University of Chicago in commemoration of the sesquicentennial of the publication of the *Wealth of Nations* are brought together in *Adam Smith, 1776-1926* (University of Chicago Press, pp. ix, 241). The lecture on Smith as a moralist and philosopher, by Glenn R. Morrow, will be of most interest to political scientists.

Benjamin H. Hill; Secession and Reconstruction (University of Chicago Press, pp. ix, 330), by Haywood J. Pearce, Jr., is an impartial and otherwise adequate biography of a Southern leader who previously had been the subject of only a brief eulogistic sketch. It will have importance for all students of American political history.

Politics and Education, by Leonard Nelson (Allen and Unwin, pp. 253), is a collection of addresses dealing with such interesting topics as "Democracy and Leadership" and "The Education of Leaders."

Harper and Brothers have published *A Short History of China*, by E. T. Williams (pp. xviii, 670). Professor Williams' qualifications for writing on China are above question; but this most recent work is disappointing. The space of two hundred and twenty pages is none too much for the political and cultural history of China before 1644; it becomes less than enough when two pages are given up to the superstitions of Shih Huang-ti and two more to the frivolities of Yang Kwei-fei. After 1644 the book deals almost exclusively with China's international relations and internal disorders. The work is well done, but it has all been done before.

Professor H. M. Vinacke's *History of the Far East in Modern Times* (Knopf, pp. xx, 479) limits its area to China, Japan, Korea, and Eastern Siberia, and the time to the period since 1800; less than a dozen pages being given to events before that date. Within these limits of time and space, the author has produced an extremely useful volume. The outstanding political events are treated adequately and with impartiality; but, throughout the book, major emphasis is laid upon the cultural, social, and economic developments which have resulted from the interplay of new forces in the affairs of the Orient.

The Guilds of Peking, by John Stewart Burgess (Columbia University Press, pp. 270), including a study of forty-two contemporary professional craft and commercial guilds of Peking, interprets a part of the social-economic life of China, especially its non-political, extra-legal aspects. "The problem of a living" is the chief guild sanction, together with "religious fear, tradition, mutual advantage, and the personal influence of leaders." The limited scope of the work is compensated for by its thoroughness, and its interesting material is made intelligible by proper and critical attention to context and method.

The Stream of History, by Geoffrey Parsons (Scribner's, pp. ix, 590), is well named. It is a readable survey which aims to present the centuries "as a stream of mingled fact and theory, now clear, now muddied by passion and prejudice, eddying about this hero or that, and reaching each generation through the shifting channels of individual minds." The author has accomplished his aim in commendable fashion. The book is well written and shows the result of careful thought and interpretation. In other words, it is not merely a series of impressions dashed off in a hurry to give vent to half-baked ideas.

RECENT PUBLICATIONS OF POLITICAL INTEREST BOOKS AND PERIODICALS

CLARENCE A. BERDAHL

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AMERICAN GOVERNMENT AND PUBLIC LAW

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Belmont, Perry. Le tarif douanier et les partis aux États-Unis, 1789-1927. Pp. 110. Paris: Payot.

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SOCIAL ORDER AND POLITICAL AUTHORITY

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No present political tendency is more marked than the extension of law to cover ever wider fields of conduct. Political scientists and constitutional lawyers have come to recognize that this tendency can be properly assessed only by examining how law operates in contrast and connection with other agencies of order such as custom, ethics, religion, and economic forces.¹ When one wishes to understand the failure of such laws as the Sherman Anti-Trust Act or the Volstead Act to accomplish the results expected of them, or when one wishes to form a judgment of the effects to be anticipated from the operation of a minimum-wage law or from the codification of international law, it is important to understand the relation to the other forces which are giving direction to human conduct. There are regularities and patterns of adjustment in human behavior due to other causes than law administered by government; and these regularities not only work at times toward the same, or some of the same, ends which it is sought to attain by law, but at times they form a highly resistant part of the material against which law must work. An effort will be made in this paper to present the problem of law and government as part and parcel of the whole

¹ "In a scientific treatment of social questions it is imperative that there should be a precise conception of law apart from social regulatives generally." H. Goitein, *Primitive Ordeal and Modern Law* (London, 1923), p. 20. This caution is often disregarded by anthropologists and by recent jurists, who, in revolt against Austin, treat all forms of social regulation as "law." See my article, "The Law Behind Law," *Columbia Law Review*, vol. 29, p. 137, note 81 (Feb., 1929).

wider problem of social order, beginning with an attempt to understand the nature and operation of what may be called the "non-political" agencies of order. The task is facilitated by the contributions which anthropology has made to our knowledge of primitive peoples, and by the light which psychology has shed on the springs of conduct. We no longer have to rely like Hobbes and Rousseau on a naïve theory of human nature or upon a fancy-picture of savage life. The outstanding result of the newer contributions has been to emphasize the central significance of the principle of relativity in the social no less than the physical sciences.

I. HUMAN INTERESTS AND INTEREST-CONFLICTS

The phenomena which we call "social" spring from factors which operate whenever two or more human beings stand in such a relation that the acts of one can directly or indirectly influence those of others. Since such a relationship between at least a sufficient number of individuals to form a family group is a condition of the continuance of the race, man is "by nature social" in the sense that his characteristics have been shaped under conditions of human interaction in groups. Without accepting the implications of the so-called behaviorist psychology, human activities may be described as responses of the actor to an environment consisting in part of physical elements like climate, soil, flora, and fauna, and in part of human elements such as the attitudes and habits of other human beings with whom he is in contact.² The study of social order must begin, not with any contrast between individuals conceived as independent and groups conceived as something other than the individuals composing them, but with the concrete phenomena of human interactions.³ The activity of one human being may reinforce, or coöperate with, the activity of another, or it may

² Dewey, *Human Nature and Conduct* (N. Y., 1922), pp. 14-15; E. B. Holt, *The Freudian Wish* (N. Y., 1915), pp. 54-59. The response is also affected by previous responses in the life of the individual and his ancestors. Gumpłowicz, *Outlines of Sociology* (Phila., 1899), pp. 159-160; H. J. Ford, *The Natural History of the State* (Princeton, 1915), pp. 77-80, and *passim*.

³ Dewey, *The Public and its Problems* (N. Y., 1927), pp. 185-193.

interfere with it, i.e., prevent it from completing itself, or, as we say, "attaining its object." When such interference frustrates what is felt by that other as an interest, the material is present for conflict or disorder. Scientific exactness is not claimed for the use here made of the word "interest"⁴; it is employed only as a familiar and convenient term to designate any fairly persistent attitude toward the environment, expressing itself variously as a purpose, claim, or expectation, whose satisfaction the possessor regards as a "good" or "utility," and whose frustration by another produces a feeling of disappointment or resentment which may be strong enough to stimulate retaliatory action, i.e., action to frustrate some interest belonging to the other.

It has sometimes been thought possible to draw up a catalogue of human interests valid for all times and places and capable of serving as a basis for a complete social philosophy;⁵ but the attempt has proved as disappointing as the corresponding effort to catalogue so-called human instincts.⁶ Interests are not fixed. An interest derives its content and direction not merely from capacities and urges which are uniform among human beings, but still more from the special environment, physical and human, which evokes particular types of effort and reaction on the part of members of particular groups, and from expectations which conditions within a group lead its members to regard at any given time as likely to result in satisfaction. The interests of members of different groups will thus differ as the environment and habits of the groups differ. Furthermore, as a group becomes more complex, the interests of its different members will come to be diverse in content, so that what is felt by one to be a violation of an interest will not

⁴ For attempts at scientific definitions see Dewey, *Human Nature and Conduct*, pp. 164ff.; Albion W. Small, *General Sociology* (Chicago, 1905), pp. 425-442.

⁵ E.g. Ratzenhofer's catalogue, *Wesen und Zweck der Politik* (Leipzig, 1893), in Small, *op. cit.*, p. 252.

⁶ McDougall, *Introduction to Social Psychology* (Boston, 1918), *passim*; Dewey, *Human Nature and Conduct*, pp. 131-169; L. L. Bernard, *Instinct; A Study in Social Psychology* (N. Y., 1924).

necessarily be so felt by another. This variation in the nature of interests is to some extent obscured by rough uniformities of desire and reaction resulting from capacities and inclinations common to all human beings.⁷

Doubtless all interests can be classified as centering ultimately around one or more of these basic identities, such as the universal interest in security from diminution of bodily integrity, security of the feelings from insult and of the reputation from slander, security in the exclusive control of physical objects brought within the individual's power, and security in the attainment and enjoyment of food, shelter, and sexual gratification. But such classification does nothing to define the scope or content of a particular interest in any given case; and it is the scope and content of concrete interests, rather than the abstractly conceptualized focus around which they can be described as centering, that brings them into conflict with other interests, and thus raises the problem of social order. They clash at the periphery and not at the nucleus, and for purposes of social order we therefore need always to know how far out from the nucleus they reach and what specific claims they cover, rather than around what center or centers they revolve, before we can know what acts will be regarded as violating them. Words or bodily impacts which would be regarded as insults or assaults among sedentary groups often pass unnoticed in groups engaged in rough labor; among many peoples sacrificial murder or suicide is accepted without protest by the victims and their families; acts which in some societies arouse extreme jealousy are disregarded elsewhere; and nowhere is there wider diversity than in the degree of interference which individuals resent with objects which stand to them in the relation of what we call property.

Interests in bodily integrity and in the maintenance of control over physical objects are often relatively unimportant in comparison with more complex interests which are felt with equal or greater intensity. Among these are claims to that coöperation by others which is advantageous for the attainment

⁷ Hobhouse, *Morals in Evolution* (N. Y., 1921), p. 28.

of objects not capable of being attained, or attained so readily, by separate effort. Where habits of such coöperation have become established, the participants generally come to expect their continuance, and are likely to think their interests violated by refusal of a member of the group to lend further participation, or by any act which renders the customary coöperation more difficult or less fruitful. Nothing is more usual than for members of a group to regard themselves as having a so-called "vested" interest in the continuance of any existing state of the environment, human or physical, considered as advantageous. People who have been in the habit of picnicking or playing ball on waste land are likely to regard it as an invasion of their interests if the land is enclosed for cultivation or built over. A more extreme illustration of the feeling of vested interest in an existing favorable situation is afforded by the attitude often assumed by a nation in whose neighborhood another nation proposes to acquire a colony or coaling station. Still more extreme is the attitude of one of two business rivals who regards as an invasion of his interests any relative increase in the trade or resources of his competitor.

The last illustration suggests a characteristic of human interests of basic importance for the problem of social order—their tendency, namely, to expand outward indefinitely and embrace within their scope claims and expectations which come sharply into conflict with full-fledged or incipient claims and expectations of others. An interest attaches itself to and becomes implicated in an established relationship with some feature of the environment; and as new kinds of activity with reference to this feature come within range of possibility, the interest fastens on these and carries over to them an extension of the original attitude. Thus, under typical conditions of the modern economic environment, if a man is in control of an urban lot for the purpose of indefinitely enjoying there a two-story dwelling house, he is apt to feel that an interest of his has been violated unless he is allowed to erect on the lot a twenty-story skyscraper or a gasoline filling station when skyscrapers or filling stations come to be in demand in the neighborhood, or

unless he is allowed to extract by pump and derrick any oil that may be found under the surface. On the other hand, owners of adjacent property may regard as an invasion of their interests such an alteration in the use of the lot.

The forms which interests assume can therefore only be described as historical products, i.e., as due initially to the special combination of elements involved when some feature or features of the environment, physical or social, shape into a more or less stable attitude one or more of the manifold inclinations of a human being. They are fluid in the sense that they attach themselves to new objectives. It results that we can never know the interests of a particular individual simply by knowing the reactions common to human beings under different classes of circumstances, but only by knowing completely his individual history; and even knowing that, as far as it can be humanly known, we can never completely predict his future interests, because we have no assurance as to what combinations of responses to environmental factors will attain sufficient stiffness of organization to alter the character of his existing interests or add to their number.

This fluctuation and interplay of interests is an integral part of the meaning of life. If interests could be fitted into identical moulds and made to repeat themselves with monotonous uniformity on the part of all human beings, society would become a machine. The shifting and growth and succession of interests within the individual and the group are one of the things that we mean by life when we contrast it with mechanism. But this process necessarily entails continual conflicts between interests the satisfaction of which is physically incompatible.⁸ It entails such conflicts within the individual, and leads to those crises of character which form the themes of drama. While conflict between rival interests within the same individual is inevitable, equally inevitable seems to be the struggle to establish a way out of the conflict by some working compromise. So, too,

⁸ A narrow form of economic determinism is represented by Carver's contention that all forms of interest-conflict spring from "economic scarcity." T. N. Carver, *Essays in Social Justice* (Cambridge, 1915), p. 49.

within a group the inevitability of conflict between inconsistent interests belonging to different individuals is matched by efforts to reduce frustration, not to any fixed minimum, but to the point beyond which life in the group would be felt by the members as intolerable. These efforts may be described as the quest for social order. It must not be conceived as a search for a static pattern which will bring all friction and conflict to an end, or even as a deliberate search, but rather as a constant tendency toward adjustments which will diminish the frustration of at least those interests felt within the group most intensely, or felt intensely by the most energetic members of the group at a given time.

✓ Since conflict between interests is inevitable, it seems sometimes to be thought that the quest for order is misdirected. To take this view is to mistake the meaning of social order. To regard the total suppression of conflict as the test of order is to conceive order in a sense which would be as valueless as it is unattainable. It obscures the most vital aspect of the problem, which is the aspect connected with social change and the readjustment of human relationships. Every such readjustment issues out of what amounts to a conflict of interests, and room for such conflicts must therefore always remain if what we call growth or "progress" is to go on.⁹ But the fact that conflict can never be completely eliminated does not mean that men are necessarily deluded in eliminating particular conflicts, or all conflicts of particular kinds. On the contrary, it frequently happens that certain kinds of conflicts must be excluded if men are to be free to turn their attention to others felt to be more fruitful.¹⁰

For better or worse, men seem to require—because always and everywhere in the groups in which they live they tend to develop—some sort of arrangements to preserve for individuals areas within which interests of certain kinds are safeguarded from invasion. They work toward cessation of conflict at

⁹ Ratzenhofer, *op. cit.*, sec. 17; Small, *op. cit.*, pp. 201–206; C. H. Cooley, *Social Organization* (N. Y., 1912), pp. 199 ff.

¹⁰ Carver, *op. cit.*, pp. 89–90.

certain points, or of conflict with particular weapons, or conflicts which involve invasions of certain kinds of interests. There is no sharp boundary between a "state of nature" where no interests are protected and a social state where all are guaranteed. What we everywhere have is rather a protection of certain interests by one or another type of agency; and one of the most significant facts for the study of social relations is the constant alteration, usually gradual and imperceptible, but sometimes sudden and catastrophic, in the nature of the interests thus protected and in the agencies operating to supply such protection. These agencies can be described as agencies of social control. The protection of an interest belonging to one individual requires a particular kind of conduct on the part of others at points where such conduct can affect the interest in question. An agency of social control is one which operates to confine the conduct of individuals within lines compatible with interests belonging to others, and which tends to prevent other conduct that physically would be equally possible.

The more developed forms of social control, which are those that the term naturally suggests in an advanced society, raise the question of how far the protection of an interest belonging to one individual affords valid justification for the limitation which the control imposes on the freedom of action of others.¹¹ Control presents itself in the form of an external barrier to the exercise of personal liberty and free moral choice. This is particularly true where control takes the form of law enforced by the physical power of a political organization. It is therefore important to notice that not all control presents itself openly as such—that some of the most basic agencies of control operate quite differently. The fundamental adjustments between human beings living near enough together to influence one another's interests work themselves out in great part unconsciously and without the knowledge of the persons affected. Interests being largely responses to the environment, social as well as natural, in directions which promise satisfaction, the tendency is always for those interests to form and persist for which room exists in

¹¹ W. W. Willoughby, *The Nature of the State* (N. Y., 1896), pp. 30 ff.

the environment, i.e., interests of such character as dovetail comfortably with the feature of the environment formed by the interests of the other members of the group. Interests for which there is no such room tend to be crowded out by those which have shaped themselves to work together. This unconscious adjustment of interests within a group proceeds hand in hand with, and manifests itself externally in, the formation of customs. Interests, on examination, prove to be perhaps as largely the product of customs as customs express the adjustment of interests.¹²

II. CUSTOM AS AN AGENCY OF SOCIAL CONTROL

Hardly any term has been employed more vaguely in social and political thinking than custom. It seems desirable for purposes of clarity to confine the word to external acts or refusals to act, rather than to extend it, as is often done, to include mental states or judgments about acts.¹³ Doubtless every customary manner of acting, because interests have shaped themselves to it, tends, when consciously reflected on, to be accompanied by an opinion that it is the correct or "right" manner of acting. But custom is not always self-conscious; and it will produce many of its effects if adhered to, even by persons who do not believe it to be "right." There is therefore need for distinguishing between customs as ways of acting and the opinions of "rightness" which may or may not accompany them. Custom as here used will signify a response to a given situation in the form of an external act or inaction which has become so standardized that it can be depended on to recur as often as the situation in question confronts any member of the group within which the custom prevails.

(The value of custom as an agency of social adjustment consists in its establishing relatively fixed points around which the conduct and interests of different individuals can shape themselves. When one individual follows a custom, i.e., does the act

¹² Dewey, *Human Nature and Conduct*, pp. 58, 63.

¹³ The doctrine of the historical jurists that custom has its roots in belief or conviction (my article, *supra*, note 1, p. 130, note 61) represents an antiquated psychology.

customary in that situation, the act will have been anticipated by other members of the group who are confronting the same situation, so that the latter will be prepared for the act and know how to respond to it. In ordinary course, they will be neither surprised nor offended; their interests will have been so moulded in advance by the existence of the custom as part of their social environment that the performance of the customary act will involve no invasion of those interests.¹⁴ Frequently, however, the operation of custom proceeds a step further: where a custom involves an act having a possible influence upon another individual, the custom will not merely indicate to the latter what to expect, but will also supply him with a customary mode of response. In this way the acts of different individuals living in proximity are canalized into lines of habit adjusted to prevent collisions. The simplest illustration is the so-called rule of the road, or custom that an individual driving or walking shall keep to the right or left side of the way, thereby automatically avoiding collisions with persons coming in the opposite direction and observing the same custom. A more complex instance is the migration customs of nomadic tribes, who follow customary paths and maintain a customary schedule year after year which keeps them from ever meeting on the same grazing or camping grounds.¹⁵ How custom prevents more intangible forms of interest-conflicts is illustrated by the operation of a customary price for the sale of a commodity. When such a price prevails, the buyer is not likely to feel aggrieved at having to pay what in the light of the custom he has fully expected to pay, while the seller is not disappointed by failure to receive a higher price, which in the light of the custom it has not occurred to him to expect.

Custom is effective as an agency of order only in so far as it supplies the members of a group with fixed channels of action which have fully adjusted themselves to one another. To produce any appreciable amount of order, these channels must be

¹⁴ Hobhouse, *op. cit.*, p. 12; Dewey, *Human Nature and Conduct*, pp. 63, 75.

¹⁵ MacGahan, *Campaigning in the Oxus*, p. 51, quoted in E. A. Ross, *Social Psychology* (N. Y., 1908), pp. 200-201.

numerous enough to cover most of the activities of human beings which are likely to bring them into contact. The place to study custom at work as an agency of social control is therefore among primitive groups where custom is responsible for almost all the social order that exists.¹⁶ The number of different things done by a particular savage in the course of a day may be as great as, or greater than, those done by a typical member of a modern society; but there is far less variety, actual or possible, in the different kinds of things done on different days, and in the kinds of things done by different persons. This relatively limited field of action makes possible a rigid standardization of practically the whole of conduct. "Custom regulates the whole of a man's actions, his bathing, washing, cutting his hair, eating, drinking and fasting,"¹⁷ his hunting, distributing the game, cooking, sleeping, migrating, marrying, and being buried. The activity of each member of the group being thus reduced to known grooves, the interactions within the group tend to adjust themselves automatically so as to reduce friction to a minimum. As migration customs operate to prevent nomadic groups from colliding, hunting customs serve to confine the different individuals or groups within a tribe to different areas so as to prevent misunderstandings and disputes.¹⁸ Standardized modes of action grow up at other points where room for differences might lead to clashes of interest. An illustration is afforded by the elaborate game-distribution customs which have been described by Howitt for the Southeastern Australians. "Food, including all game caught by the men and all vegetable food obtained by the women, was shared with others according to well understood rules."¹⁹ Everyone knowing in detail pre-

¹⁶ B. Malinowski, *Argonauts of the Western Pacific*, p. 159; R. R. Marett, *Anthropology*, pp. 183-184.

¹⁷ Sumner, *Folkways* (Boston, 1906), pp. 4, 28.

¹⁸ Lowie, *Primitive Society* (N. Y., 1920), pp. 211-213. See F. G. Speck, *Publications of the American Sociological Society*, vol. xii, 82 ff.

¹⁹ A. W. Howitt, *Native Tribes of Southeast Australia* (London, 1904), pp. 756-9. The location of individual huts in a camp was also prescribed by custom, as well as the sleeping-place of each individual inside the hut. *Ibid.*, pp. 773-6.

cisely what to expect, practically no room is left for disagreement or disappointment about a matter which might otherwise easily produce conflict.

For most exigencies of primitive life, custom assigns to each individual a definite post or station having a fixed mode of customary behavior attached to it. The primary purpose of primitive social organization is to fit each individual into such a niche. Economic functions, the nature, amount and time of productive services, military functions, all belong by custom to particular posts in the group, which in turn belong to particular individuals. Usually this allocation of behavior is based on blood relationship, children pursuing certain customary conduct toward their mother, their father, their mother's brother, brothers following certain conduct toward their brothers and brothers' wives, husbands behaving in particular ways toward their wives' fathers and mothers.²⁰ This allocation of behavior on the basis of position within the group makes it difficult for savages to deal with an outsider who has no place in the system; no member of the group knows exactly what to expect of him or how to behave toward him. When friendly or coöperative relations with such a stranger are desired, the difficulty is surmounted by the practice of adoption.

A given custom cannot ordinarily be identified as promoting or protecting any single "natural" interest corresponding specifically to the custom. Rather, customs embody conduct in which a number of conflicting interests or interests capable of conflict have for the time being reached equilibrium, each securing in the customary conduct a certain amount of recognition in the face of conflicting interests which apart from the custom might have annihilated it. Thus the complicated marriage customs prevailing among primitive peoples represent a balance

²⁰ W. H. R. Rivers, *Social Organization* (N. Y., 1924), pp. 37-8; Lowie, *op. cit.*, pp. 80-81. Rules of "avoidance" between certain relatives, e.g., son-in-law and mother-in-law, brother and sister, are very common. Howitt, *op. cit.*, p. 296; Malinowski, *op. cit.*, p. 71; R. F. Barton, "Ifugao Law," *University of California Publications in American Archaeology and Ethnology*, vol. 15, pp. 90-1 (1919); Lowie, *op. cit.*, pp. 84-5, 97-102. "Communal labor is based on the duties of relatives-in-law." Malinowski, *op. cit.*, pp. 157-8, 160.

which has worked itself out between the interest of every individual in selecting a mate and other interests of the same individual and his fellow-members of the group in preserving the group unity and the system of family organization on which the functioning of the group depends.²¹ When a number of interests thus reach adjustment in a custom or set of customs and adapt themselves to it, it is impossible to say with accuracy how much any one of the interests involved contributed to the total result, or how much any one would suffer if that result were disturbed. The custom, in other words, is not a mechanical, but an historical product, in that there went into its making a chain of countless events too minute for observation, and the character of the result is dictated by one or more such minute occurrences in ways too obscure for identification. We should not be blinded to this historical character of custom by the fact that widely separated primitive peoples have developed customs of a similar character²²; for it is matched by the opposing fact that tribes living in close proximity and under substantially identical conditions show marked differences in their customs on the same points.²³

The fact that customs do not express a mechanical balance of fixed interests, each of which can be assigned definite weight, suggests that almost any change in the interests of members of a group is apt to disturb the whole fabric of customs in ways that cannot be foreseen. There is thus disclosed the chief weakness of custom as an agency of control, i.e., its inability to function effectively except in extremely static societies.²⁴ The adjustments which it brings about at any one point rest on the maintenance of equilibrium between interests at countless other points. If new interests crowd in anywhere, all the old interests are bound to be in some degree dislocated,²⁵ and

²¹ Hobhouse, *op. cit.*, pp. 45-6.

²² See A. L. Kroeber, *Anthropology* (N. Y., 1923), pp. 216-240, for the "diffusion" theory.

²³ Malinowski, *op. cit.*, pp. 37, 41, 42, 53, 56; J. B. Danquak, *Akan Laws and Customs* (London, 1928), 1.

²⁴ Willoughby, *op. cit.*, pp. 144-6.

²⁵ For the way in which interests which once gave rise to conflict silently

the adjustments which these have reached in the form of any particular mode of behavior, or custom, will no longer be an adequate adjustment of those interests in the new forms which they have assumed. Furthermore, since time in long terms is required to abolish a custom once established, the old custom which represented the former adjustment will remain outstanding. Every custom during its dominance generates a special interest or group of interests centering about its maintenance, and this special interest naturally persists on its own account after the original usefulness of the custom for adjusting other interests has disappeared. Nothing is therefore more common in societies which are becoming mobile than the persistence of old customs which have become dissociated from present interests of the society other than the merely special interests centering about maintenance of the custom. When this point is reached, such customs become obstacles to adjustment.²⁶

In a savage society the interests of all members of the group remain in large part identical from generation to generation, and there is little danger of even the disturbance which might be caused by a transfer of interests from some individuals to others within the group, since so far as interests are specialized they are assigned to specific persons by the form of the social structure. When a new interest or new form of activity emerges, if it proves persistent, it can be gradually taken up and fitted into the existing scheme by a series of unnoticed dislocations. No feature of modern society is more marked than the rapidity with which methods of action and the interests corresponding to them change and fluctuate.²⁷ This is in part due to constant changes in technology produced by the progress of invention. A second cause is the increasing subdivision of labor unaccom-

dissolve before changes in the environment, see Lecky, *History of European Rationalism* (N. Y., 1910), vol. i, pp. 35 ff.

²⁶ Marett, *op. cit.*, pp. 185 ff.; Sumner, *op. cit.*, p. 17. For the survival of customs into a changed environment, see Katherine Mayo, *Mother India* (N. Y., 1927), *passim*.

²⁷ Cf. P. Sorokin, *Social Mobility* (N. Y., 1927), *passim*.

panied by any fixed attachment of specific functions to specific individuals. A third is the increasing ease of travel which brings human beings into physical contacts in ever-shifting combinations. The result is that the particular experiences and interests of different individuals who are in contact come to differ more and more widely in content and scope. Customs do not develop at points where the interests of different individuals touch, because the same group of individuals seldom find themselves in repeated contact at the same points for a long enough time, and because particular points of identical contact do not repeat themselves with sufficient frequency. Identical situations therefore evoke countless different responses on the part of different individuals, and the number of specific acts which one person can safely expect to be done by others in a given way in the face of a given situation is reduced to a minimum.

The contrast between the mobility of modern society and the immobility of a primitive group must not be pressed too far. Modern, no less than primitive, life tends to develop standardized ways of doing things in the face of fairly stable aspects of the physical and social environment, i.e., of doing those things which everyone does and those things which are done repeatedly.²⁸ In a modern society, however, the number and importance of acts which do not fall into either of these categories is vastly greater than under primitive conditions. The uniformities of modern life tend to be confined to superficial matters of dress, manners, ways of preparing and serving food, and the like.²⁹ Among the members of a modern community the elements of interest which have been formed by mutual adaptation cannot run very deep. This is responsible not merely for much of the often criticized superficiality of modern civilization, but also for much of its pathos.³⁰ The uniformities of life always become centers of the deepest loyalties; and when these

²⁸ G. Tarde, *Les Lois de l'Imitation* (Paris, 6th ed., 1911), p. 10.

²⁹ Because many such uniformities are less deeply rooted and change much more rapidly than customs, Tarde distinguishes them by calling them "fashions," *op. cit.*, p. 350.

³⁰ Dewey, *The Public and its Problems*, pp. 213 ff.

uniformities are thinned to externals, to a shibboleth or a hand-shake, there is a tragic disproportion between the loyalty and its object.

There are, however, other uniformities without which the processes of modern life could not go on—such uniformities as the practice of using money, working for wages, employing credit, advertising, and the like. Such uniformities rather determine the skeleton and framework of the general environment within which human contacts take place than effect adjustments of concrete interests and contacts of particular individuals within that environment. While they supply fixed points about which the activities of the community as a whole can be said to shape themselves, these points are not sufficiently numerous, or close enough together in the organization of the activity of particular individuals, to dictate in detail their responses to specific situations. They almost always leave to any two or more individuals a sufficiently large lee-way for free choice in their mutual relations at any given point of contact to make possible a clash of purposes and interests. They shape expectations only in the loosest way, and thus do not guarantee exact correspondence of conduct to expectations. In other words, they standardize only a small number of the factors or elements in any concrete situation and leave the rest to the clash of interests.

No such absolute distinction as might seem here suggested can be drawn between these modern uniformities which are too imperfect to serve as agencies of control and the more complete uniformities which prevail in primitive groups. The difference is one of degree. Even in primitive life, the established uniformities which dictate individual action in a given situation do not dictate the whole of that action, but leave a certain amount of "play" for discretion. Thus in the matter of marriage, while custom prescribes the manner in which the transaction is to be carried through and the conduct which as a result of it is to be observed toward the wife and her relatives, and while it designates the particular group of females from whom the wife must be selected, it does not, except in rare instances,³¹

³¹ *E.g.* in the case of the so-called "levirate." Lowie, *op. cit.*, pp. 18-9.

point to any special female as the necessary mate, but leaves this essential matter to freedom of choice. An interesting illustration of the room left for personal discretion in the intervals of primitive custom occurs in connection with the remarkable institution of the *Kula* in the Trobriand Islands, studied by Malinowski. This is an elaborate system of ritual exchange of certain ceremonial objects, armlets and necklaces, carried on between inhabitants of different islands. The persons between whom any given exchange is to take place, as well as the question of which of any two parties is to receive the armlets and which the necklace, are determined by the customs of the institution; but custom does not prescribe how long an interval is to elapse between the receipt of one article and the return of the other, or establish any correspondence between the quality of the article given and that of the article returned. These matters are left to discretion, with the result that disappointment and a sense of injury often occur if the return present is not as handsome as the giver thinks himself entitled to.³²

If conflicts of interest in the areas of discretion left by custom are to be prevented or resolved after they have arisen, there is need for some additional agency of adjustment besides custom. The question may be raised why this need does not seem to be more keenly felt among primitive peoples. The reasons seem two-fold. In the first place, the interests of primitive men appear to be concentrated dominantly on matters which have been reduced to custom. If, in other words, individuals meet with the conduct which the existence of prevalent customs leads them to expect, they seldom seem to attach great importance to the defeat of more purely private expectations. This appears from savage behavior about two matters which it might be anticipated would supply a fertile field of conflict, namely, sexual relations and property. The savage apparently feels intensely any infractions of the established marriage customs which interdict the union of persons not belonging to special classes. Apart from this, irregularities on the part of one spouse

³² Malinowski, *op. cit.*, pp. 91-6.

do not seem to be greatly resented by the other.³³ The same difference applies to many forms of what we should call property relations. In so far as customs exist allotting to a particular family or group the privilege of hunting over a given area, or the control of a given plot of land for agricultural use, the invasion of the privilege would be hotly resented. On the other hand, the forms of property whose enjoyment is not thus regulated by custom are likely to be of such minor importance that disputes which may arise owing to the absence of customary control are not apt to be serious.³⁴

When interests outside the moulding force of custom come to be felt with sufficient keenness to be insisted on by retaliation and force, the resulting conflicts may be severe. The reason why such conflicts do not at once bring into existence types of control strong enough to curb them is doubtless the fact that primitive men are not so much disturbed by the existence of such conflicts among their fellows as the members of a more advanced community would be. If one member of a primitive group regards his interests as invaded by another and forcefully retaliates, the members who are not parties to the dispute apparently do not find themselves inconvenienced by the progress of the quarrel in the way that the members of an advanced society would be. A considerable amount of conflict within the group, even when carried on by methods of physical violence, is tolerated because it does not amount to an invasion of what other members of the group feel as interests.

Custom, even in the extreme form in which it operates in primitive societies, is never so entirely automatic as for full

³³ E. S. Hartland, *Primitive Paternity* (London, 1910), vol. 2, pp. 101 ff.; Spencer, Baldwin, and Gillen, *Native Tribes of Central Australia* (London, 1899), pp. 99-100; Howitt, *op. cit.*, p. 682; Hobhouse, *op. cit.*, p. 136. See Malinowski, *The Family Among the Australian Aborigines* (London, 1913), for customary regulation of sexual irregularities, e.g., by the institution of "pirrauru marriage." "The majority of fights and quarrels are about women." *Ibid.*, p. 125.

³⁴ Lowie, *op. cit.*, pp. 209-215. For emphasis on the peaceful character of life among the lower hunting peoples, see W. J. Peñry, "The Peaceable Habits of Primitive Communities," *Hibbert Journal* (Oct., 1917), 28 ff.; among the town-agricultural peoples, Thorstein Veblen, *The Instinct of Workmanship* (N. Y., 1914), 100-102, 120-129.

effectiveness it ought to be.³⁵ It does not consist of absolutely determined physiological reflexes, but is always imposed on activities which physiologically might take one form rather than another.³⁶ Its chief support is the force of habit operating in individuals. Once a mode of behavior has been acquired, the greater ease of repeating it, as contrasted with striking into a new form of action, tends to perpetuate it.³⁷ But this tendency is not always unopposed by a contrary inclination to change in the mere interest of adventure or experiment.³⁸ Custom can do its work only when this counter tendency is somehow kept weak or held in check. Moreover, even though a customary mode of behavior tends to maintain itself on the part of the individuals who have acquired it, it is not inherited, and must therefore in some way be transmitted to new members of the group. A propensity to imitation doubtless plays the leading rôle in such transmission, but it cannot be depended on exclusively.³⁹ Accordingly, in societies whose social adjustments rest dominantly on custom, support for custom is usually required in the form of an apparatus of *education* and an apparatus of *sanctions*.

External sanctions causing an individual to follow a course of action in cases where the thought of acting otherwise occurs to him are supplied by fear of unpleasant consequences. Primitive man fears unpleasant results from three sources if he fails to act in the customary manner. If the custom is one which involves reciprocal action by a fellow-member of the group, he realizes that by not doing his part he will probably not receive from the other the favorable action which the custom entitles him to

³⁵ Malinowski, *Crime and Custom in Savage Society* (London, 1926), *passim*; *Argonauts of the Western Pacific*, p. 115.

³⁶ Hobhouse thinks this true even for "instincts", which are intermediate between physiological reflexes and habits. *Op. cit.*, pp. 4-6. For "plasticity of instincts," see Malinowski, *Sex and Repression in Savage Society* (N. Y., 1927), pp. 225-8.

³⁷ McDougall, *op. cit.*, chap. 15.

³⁸ Maine, *Early Law and Custom*, p. 264.

³⁹ E. L. Thorndike, *Educational Psychology: The Original Nature of Man* (N. Y., 1919), pp. 108-122.

expect.⁴⁰ To meet cases where an individual might be willing to take this risk, there is always in the background the censure which public opinion within the group is sure to visit on the custom-breaker. This censure may go so far as complete ostracism, the effect of which, by excluding the offender from his niche in the group, is to deprive him of the only means of livelihood that he knows.⁴¹ Finally, and most importantly, primitive customs are accompanied by religious or magical sanctions. The savage believes that if he does not do a thing in the customary way unfavorable consequences will automatically ensue as a result of magical processes.⁴² This connection of primitive custom with religion seems to have supplied the chief bridge across which purely customary control of conduct has passed into other and more elaborate forms of control.

The religious aspect of custom not only provides a set of sanctions but also prepares the apparatus of education needed for custom to operate effectively. For the savage, religion is a matter of specialized or technical lore, and as such calls into being specialists who are adepts in its learning.) These technical experts become guardians of the customs having religious implications, which in practice means the whole body of customs;⁴³ and as such they stand ready and willing to inculcate these customs in successive generations. The initiation ceremonies universally practiced among primitive peoples are an institution for this sort of education conducted under the control of the specialists in tribal traditions.⁴⁴ The formation of such a group of specialists is of great importance for the operation and development of custom, since it provides a fulcrum or pivot from

⁴⁰ What Malinowski calls the "reciprocity of services." *Crime and Custom* pp. 22-7.

⁴¹ Rivers, *op. cit.*, p. 168. For ridicule as a social sanction, and the peculiar institution of "joking relatives," see Lowie, *op. cit.*, p. 100; Hartland, *Primitive Law*, p. 162.

⁴² Howitt, *op. cit.*, pp. 296-300; Frazer, *Golden Bough* (one vol. ed., N. Y., 1925), pp. 11-48; Malinowski, *Argonauts*, pp. 59-60, 73, 116.

⁴³ Howitt, *op. cit.*, p. 316.

⁴⁴ *Ibid.*, pp. 530-2, 638-9; Spencer and Gillen, *op. cit.*, chaps. vii-ix; W. D. Hamby, *Origins of Education among Primitive Peoples* (London, 1926), pp. 186-199.

which custom can be directly tampered with and altered without waiting for customary modes of behavior to shape themselves unconsciously. Through their influence on the educational process and otherwise, the specialists in tradition attain an influence which enables them to dictate new modes of behavior under the guise of elucidating custom. Modes of behavior thus prescribed may, if accepted and followed, become, in time, true customs; but in origin and at the outset they differ from customs in that they result, not from direct adjustments of individuals to one another,⁴⁵ but from deliberate effort on the part of a limited number of individuals within the group to devise adjustments for the rest.

III. VOLUNTARY ADJUSTMENT OF INTERESTS

In the spheres of conduct which custom has canalized, interests emerge in shapes adapted to one another. To this extent there is no conflict or consciousness of threatened conflict, and so no sense of need for adjustment. At the opposite pole from this type of control stands the method of securing order through the conscious voluntary adjustment by individuals of their respective interests which are seen to be conflicting. There is bound to be a good deal of such conscious adjustment, even in the most custom-ridden society, within the inevitable gaps and loop-holes of custom. Collisions are sensed in advance by the parties, and in the majority of cases averted by deliberate effort. This method of voluntary case-to-case adjustment has been much emphasized by recent political theory, and its use recommended to achieve many results now sought through agencies of external control.⁴⁶ Old-fashioned philosophical

⁴⁵ Sumner, *op. cit.*, pp. 3-4.

⁴⁶ Bertrand Russell, *Principles of Reconstruction*; *ibid.*, *Prospects of Industrial Civilization*; G. D. H. Cole, *Social Theory*; M. P. Follett, *The New State*; J. P. Warbasse, *Coöperative Democracy* (N. Y., 1927); Thorstein Veblen, *The Nature of Peace* (N. Y., 1917). This view regards itself as underlying the movement for "self-government in industry," e.g., through voluntary "standardization, as a substitute for legislative control by the state." See various papers by P. G. Agnew, "How Business is Policing Itself," *Nation's Business*, December, 1925; "Can Industry Make its own Law?", *Association Management*, December, 1926, etc.

anarchists urged that social order could be maintained wholly through such adjustments.⁴⁷ The doctrines of this school have deeply influenced much of our contemporary thought. The essence of the anarchist's position is that men as rational beings can be depended on in a given situation to discover and follow the line of conduct which will best satisfy the various interests involved. He maintains the applicability to the whole field of human interactions of a method admittedly used with success throughout much of the field.

In view of the shifting and complex character of human interests, it is clear that the rationality needed to effect their adjustment must be something different from "reasoning" as employed in mathematics or the natural sciences.) Suppose two men approaching one another from opposite directions on a narrow path. Reason, in the scientific sense, will doubtless inform each that they will collide unless one gives way to one side or the other to the opposite side. It might be supposed, on a theory of "normal" human nature and "normal" human interests, conceived in terms borrowed from our contemporary social experience, that this knowledge would cause both parties to take the action appropriate to avert the collision. There have, however, been states of society where strongly felt interests of personal dignity, self-esteem, and reputation were held to be deeply, and even irreparably, damaged by thus giving way, however slightly, to another.⁴⁸ Under such circumstances an individual might well choose to run the risk of collision rather than incur the humiliation necessary to avert that risk. Where a situation involves an interest-conflict of this kind, a clash can be avoided by voluntary action only if there can be brought into play other interests strong enough to displace or modify one or both of those which are incompatible. At this point moral or ethical ideas and precepts can promote order by intervening to give to

⁴⁷ William Godwin, *Enquiry Concerning Political Justice*, book v, chaps. 22-24; Kropotkin, *Mutual Aid as a Factor of Evolution*; *ibid.*, *Anarchism, its Philosophy and Ideal*; L. Tolstoy, *The Kingdom of God is Within You*; Eltzbacher, *Anarchism*.

⁴⁸ For "taking the wall" and "keeping the wall," see Boswell's *Life of Johnson* (ed. Glover, London, 1901), vol. i, p. 61.

the sum total of interests present in a situation a new balance which makes a voluntary adjustment possible.

What we call ethics or morals has its roots, as the word indicates, in custom. The existence of a customary mode of behavior connotes on the part of most of those who follow it a fixation of habit which is shocked by departure from the custom.⁴⁹ There has been shaped to the custom an interest more intensely felt than interests which might suggest conduct at variance with the custom. (The superior strength of the former interest, when consciously recognized, is expressed by applying the term "right" to conduct conforming to the customary norm, while other conduct is called "wrong.")⁵⁰ With this emergence of the relative strength of interests into consciousness, the way is opened for a possible subsequent divorce between the idea or sense of "right" and mere conformity to custom, whenever in an individual or group some interest at variance with customary behavior comes to be felt with much greater intensity than the interest moulded to the custom. The idea of "rightness," or title to prevail over opposition, is likely to be attached to the former interest by those who cherish it, so that a conflict then arises between what is "right" and what is only customary.⁵¹

Where widespread agreement exists within a group as to what is "right," an interest is at hand to which conscious appeal can be made for the purpose of solving conflicts of other interests among members of the group. To produce such agreement is the function of ethical ideas, which generally first emerge as precepts inculcated by religion and backed by the force of religious interests and religious sanctions.⁵² (Religion and ethics promote voluntary adjustments by supplying an interest to which other interests are subordinated and whose satisfaction is incompatible with certain types of conflict, or with conduct likely to give rise to such conflicts.)

There are certain similarities and differences between the

⁴⁹ Dewey, *Human Nature and Conduct*, p. 75.

⁵⁰ Sumner, *op. cit.*, p. 28.

⁵¹ Dewey and Tufts, *Ethics* (N. Y., 1908), pp. 51-91, 428-434.

⁵² Hobhouse, *op. cit.*, pp. 419.

operation of ethical ideas and of custom. While custom canalizes interests in advance so that conflicts are prevented from arising, ethical ideas are capable of coming into play after the materials of conflict are present. Custom, when most effective, works unconsciously; ethical ideas can operate successfully as factors in a conscious choice. Like customs, ethical ideas, being the result of slow growth, are not usually adapted to adjustment of situations which have not recurred frequently. They are often a stage toward the formation of custom in a society which is becoming self-conscious, or again only the residual deposit of customs which have broken down. Frequently they produce an effect like that of custom, in that general acceptance of such an idea tends to create an expectation of conduct in conformity with it, and to this extent shapes interests in advance. The interest embodied in the idea, in making a place for itself within the group, influences the scope and character of other interests, and, in so doing, may give old interests a new shape which renders them less likely than before to collide. Thus the ethical ideas disseminated by Christianity exerted a powerful solvent effect on interests responsible for much of the conflict of the Dark Ages and opened a way for the emergence of new economic and cultural interests which further weakened and dissolved the older military interests.

Customs, being ways of acting, must necessarily be specific; ethical ideas are usually more abstract and general. This gives them a certain advantage and also puts them at a disadvantage. Through their generality, such precepts as "Do unto others as you would have others do unto you," or "Love thy neighbor as thyself," provide a solvent applicable to the adjustment of a wide range of antagonistic interests. On the other hand, such precepts are susceptible of varying interpretations and must be translated by the individual's private judgment into particulars before he knows what to do. Their usefulness is therefore not so much in dictating conduct which will avert conflict as in fostering attitudes which tend to discourage or relieve conflicts. At the same time, they may give rise to strong differences of opinion and thus become sources of conflict.

Ethical precepts derive their content originally from some

interest felt with sufficient intensity to override inconsistent interests. Such an interest is necessarily relative to the set of other interests at the time when the precept assumes the form of an ethical imperative. (As a result of changes in the physical or social environment, these interests may alter, and such alteration inevitably works a change in the form or intensity of the interest which supplies the content of the precept.) Thus the idea of duty to one's parents loses much of its strength when conditions of economic and social life impose greater individual responsibilities on the members of family groups and open wider opportunities for separate effort and separate rewards. Similarly in an age of military violence and physical insecurity the ethical idea of respect for human life and for the rights of others carries less appeal than ideas of courage and obedience, which are better adapted to promote the interests dominant in such a period.) When an ethical idea thus collides with intensely felt interests, it often serves, if it has a sufficiently long course of social habit behind it, to reduce the strength of the new interests and thus bring them into more satisfactory accommodation with previously existing interests. When the new interests, however, are associated with permanent innovations in the environment, it is more likely that the ethical idea will be transformed in character, or else will be sublimated into a more or less ineffective "ideal." Such periods of maladjustment between dominant interests and long established ethical ideas are eras of social conflict when the old imperative is seized upon as a rallying cry by one party, while devotion of the other to the new and inconsistent interests generates a competing ethical dogma.

This description of the operation of ethical ideas indicates that in many kinds of conflicts they cannot be depended on to promote voluntary interest-adjustments. (Reliance on their effectiveness is usually due to the supposition that in some way a standard code of "rational" ethics can be constructed objectively which will prescribe the behavior needed in any given situation to satisfy the interests "rationally" demanding satisfaction; and that knowledge of this code lies within the reach of anyone by a mere act of reason.) Failure to apply it is due to ignorance or

perversity.⁵³) The difficulty about such a view is, in the first place, that it assumes a number of definite and stable interests to which demonstrative "reason" can allocate relatively permanent spheres of operation with fixed boundaries between them. It assumes, secondly, that the objective "reason" which draws these boundary lines can by sheer force of its rationality impose conduct on the human individual independently of his actual interests, personal history, and habits. Both these assumptions are contrary to what we know of the nature of interests and the springs of human conduct.

If voluntary adjustments can thus not be depended on to result from ethical motives, it is sometimes thought that motives of another kind, viz., the economic, if allowed to operate freely, will supply, through voluntary action, all the order desirable in a large area of conduct. Perhaps the clearest example of a purely voluntary adjustment of interests is the negotiation of an ordinary bargain. Every such negotiation illustrates the operation of tendencies which are generalized as "economic laws." Such laws embody no imperative, but merely state the possibility of predicting that certain things will happen.⁵⁴ If workmen demand high wages when the supply of workmen of that particular class is scarce, and the employer does not accede to the demand, it is stated as a generalization or "law" that the workmen will seek employment elsewhere, and the employer will be unable to find others, except at the higher wages. If, however, the demand is made when the labor supply is plentiful, the employer can find substitutes, and unless the demand is withdrawn the workmen will be discharged. While the "law" does not undertake to say whether any particular dispute will or will not be settled by agreement, it does say that unless it is so settled, unpleasant consequences will result, in one case for the employer and in the other for the workmen. These unpleasant conse-

⁵³ Godwin, *op. cit.* (3rd ed., London, 1798), vol. i, p. 398. See my *Statesman's Book of John of Salisbury* (N. Y., 1927), pp. lxxvii-lxxx. Cf. Herbert Spencer, "The Evanescence of Evil," in *Social Statics* (N. Y., 1892), pp. 28-32.

⁵⁴ Alfred Marshall, *Principles of Economics* (8th ed., London, 1920), pp. 29-37, 770-784.

quences operate as a sanction to bring the parties to agreement on the most advantageous terms possible for each under the circumstances.

This result is not always achieved. If workmen do not understand that in an overstocked labor market their employer can fill their places with others at existing wages, or do not understand that the market is overstocked, they may stand out for a wage-increase and so lose their employment. If an employer does not understand that at a time of labor shortage he will be unable to find laborers at less than his workmen demand, he may refuse to meet their demand and so lose his business. When such ignorance exists, economic laws cannot ensure adjustments to the present advantage of both parties. The deadlock remains, and one party or the other must pay the penalty.

This result is not disturbing to those who see in the operation of economic laws a sufficient agency of control for economic behavior. If parties to a dispute are so unintelligent as not to perceive what their interests require, they will be victims of their folly and the operation of inexorable laws will effect all adjustments which are socially desirable. A glutted labor market, by depressing wages and lowering the cost of production, will bring new entrepreneurs into the field, and so in time create labor for the unemployed who have paid the penalty of insisting on high wages at the wrong time. By a kind of preëstablished harmony, situations which involve the depression of any interest will, it is supposed, tend in this way to right themselves and ultimately restore equilibrium.⁵⁵

The path toward these supposed automatic readjustments is admitted to lie through countless conflicts where one party insists on an interest favored by the trend of the economic process, while the other does battle for another interest doomed by the process to defeat. If it could be validly assumed that whatever the outcome of one or all of these specific conflicts, a single inevitable adjustment of interests is in the end dictated by the

⁵⁵ Henry C. Carey, *Principles of Political Economy* (Phila., 1837-40); Bastiat, *Harmonies Économiques* (Paris, 1850). Cf. Herbert Spencer, *Social Statics and Man versus the State*.

process, the actual result of particular conflicts would be immaterial, and no useful end would be served by attempting to ensure that any given conflict should issue in one adjustment rather than another. Actually, however, the "laws" of economics never drive forward to any such single predetermined outcome. They are always capable of producing more than one result, depending on the particular fact-situations on which they work.⁵⁶ (The ultimate redress of interests which they predict requires for its accomplishment the continuance in operation of a relatively uninterrupted set of causes.) A war, a new invention, the introduction of a new fashion in dress, will each deflect more or less the progress toward harmony which the law predicts. A succession of such interruptions may postpone the final adjustment of interests to a remote period or set up new sequences which prevent that adjustment from ever occurring.⁵⁷ There is, therefore, frequently room for a party against whose interest such a law is working to effect some change in the facts of a situation the result of which will be to cause the economic process to work in his favor rather than against him. It is to be normally expected, for example, that as the demand for goods increases, the demand for workers will likewise increase, but this result may be defeated by progressive invention and installation of labor-saving machinery. A decrease in the demand for goods would normally result in a decrease in the number of workers, but will not have this effect if through trade-union organization the workers can secure a diminution of the hours of labor.

Where the balance of advantage can thus be progressively deflected in favor of the interests of one party or the other by the introduction or non-introduction of new factors into the situa-

⁵⁶ J. E. Cairnes, *Logical Method of Political Economy* (2nd ed, London, 1875), pp. 107 ff.; F. A. Walker, *Political Economy* (N. Y., 1888), pp. 11-17; Marshall, *op. cit.*, p. 36.

⁵⁷ Henry Clay, *Economics for the General Reader* (N. Y., 1920), pp. 440-443; Governor's Advisory Commission, *Cloak, Suit, and Skirt Industry of New York City, Report of an Investigation*, by John Dickinson and Morris Kolchin (1925), pp. 143-155; Walton H. Hamilton and Helen R. Wright, *The Case of Bituminous Coal* (N. Y., 1925), pp. 19-94, 200-210.

tion, an ultimately satisfactory adjustment for both parties cannot be expected to result automatically from the operation of economic laws. The final outcome depends on the nature of the adjustments reached in particular cases, and it is really worth the while of the parties to seek to influence that result to their advantage. A series of adjustments in favor of a particular interest may give a set to the total environment which will place other interests at a more or less permanent disadvantage, and may also affect interests not directly involved or represented in the conflicts adjusted. Therefore the question of whether or not an adjustment is reached in any given case, and if so, of its nature and terms, is not deprived of importance by any tendency which the economic process may have toward a harmony of interests.

The chief obstacle to voluntary interest-adjustments, as well as the chief element of weakness in many such adjustments, is the tendency of one party to push his dominant present interest to the utmost against the opposite party.⁵⁸ Such a course can often be seen by a disinterested third person to be adverse to other interests of the former party himself which do not chance to be dominant at the time, or with interests which he might, and probably would, form on fuller awareness of the total situation. Under the circumstances, however, such a party has no effective motion to check his invasion of the interests of his opponent short of the point to which he believes that he can in one way or another compel the latter to yield. There is always danger that if the resolution of interest-conflicts is left to voluntary action by the interested parties the outcome will represent nothing more than acquiescence by one party in the claims of the other because of inability to resist actual or threatened coercion. Such a settlement is but the prelude to a new chapter of conflict. Each party fears from his opponent an invasion of interests insisted on as inviolable; and this fear, coupled with a like willingness to disregard their opponents' interests, often makes men reluctant to agree to voluntary adjustment. In so far as interest-conflicts of any importance are settled voluntarily, the settle-

⁵⁸ Small, *op. cit.*, pp. 201, 281, quoting Gierke, *Deutsche Genossenschaftsrecht*, vol. i, p. 2.

ment frequently, if not usually, requires for its accomplishment the intervention of an auxiliary agency capable of evoking and bringing into dominance interests of both parties which are mutually consistent in substitution for those which are incompatible. The importance of such "mediating" agencies is amply illustrated wherever the process of voluntary adjustment has proved effective in primitive or modern societies.

Among the Ifugao tribe in the Philippines, for example, we are informed that only those adjustments take place which are effected by custom or voluntarily arranged by the parties. No government exists, and all disputes are settled by private diplomacy. A central part, however, is played by professional middlemen or go-betweens. When a dispute arises, the party feeling himself aggrieved consults such a middleman, who puts himself in touch with the other party. "He beats down the demands of the plaintiff and bolsters up the proposals of the defendant until a point is reached at which the parties may compromise."⁵⁹ In order to bring the parties to voluntary agreement, resort is thus had to the intervention of an outsider who can study the interests of both parties impartially and evoke and intensify on both sides those interests which are favorable to a settlement. The usefulness of such an agency is coming to be recognized with special force in effecting voluntary adjustments of disputes between independent nations where increasing reliance is placed on the mechanism of mediation.^{59a} Similarly, in economic controversies it is now well understood that the method of voluntary settlement ordinarily requires the assistance of an agency of conciliation or arbitration which stands in readiness before conflict arises.⁶⁰

The existence of such an agency is not in itself a guarantee of

⁵⁹ R. K. Barton, *Ifugao Law* (*supra*, note 20), pp. 9-10, 94-9.

^{59a} *E.g.*, The Bryan "Peace Commission" treaties and the Central American treaties of 1922-3, all setting up *permanent* commissions of inquiry and conciliation. See R. L. Buell, *International Relations* (N. Y., 1925), 590-593.

⁶⁰ Julius H. Cohen, *An American Labor Policy* (N. Y., 1920); Malcolm P. Sharp, "Due Process of Law," in *Industrial Government*, by J. R. Commons and others (N. Y., 1921), pp. 193-235.

the voluntary adjustment of interest-conflicts in a manner satisfactory to both parties. The mediating agency, having nothing to rely on but its ability to evoke in the parties interests favorable to adjustment, must fail if such interests are too weak to supplant those which make for continuance of conflict.⁶¹ This is shown by many of the attempts to effect voluntary adjustments of economic disputes between business competitors or between employers and workers. A good example of the former kind is the attempt made by American railroads between 1874 and 1887 to prevent rate-wars by voluntary agreement. A conference at Saratoga between the more important roads devised voluntary rules to meet the evil. The arrangement almost immediately collapsed and was succeeded by a series of similar abortive attempts made as a result of the rate-wars of 1876, 1881, and 1886. Writing in 1878, Charles Francis Adams said: "The agreements failed because there was no authority to enforce their observance and the incentives to break the contract were always strong. . . . As soon as any company suspected another of violating the agreement it would authorize its officials to 'do as the others are supposed to be doing.' The difficulties which stand in the way of any permanent organization of a beneficial character are so great that it is little short of visionary to suggest that they can ever be overcome. There is no one legally authorized to enforce the peace between the contracting parties. Each reserves the right in the last resort to refuse obedience to the decision of any one."⁶² The same story of failure is met with in many attempts to effect voluntary adjustments between employers and workers. A conspicuous instance was the breakdown of the so-called "protocols" which were in force in the needle trades of New York City between 1911 and 1916.⁶³ By these agreements, the workers on the one hand and the employers on the other consented to certain limitations on their freedom of action in the interest of the opposite party.

⁶¹ Cohen, *op. cit.*, pp. 78-88.

⁶² C. F. Adams, *Railroads and their Problems* (N. Y., 1878), p. 191. See also E. R. Johnson, *American Railway Transportation* (N. Y., 1906), p. 227; W. Z. Ripley, *Railway Problems* (Boston, 1913), pp. 134 ff.

⁶³ Julius H. Cohen, *Law and Order in Industry* (N. Y., 1916).

Individual employers were never satisfied that the labor union was not discriminating against them through greater leniency in applying these limitations to their competitors, while the workers insisted that the employers did not conform to the rules with sufficient strictness.⁶⁴

Adjustment by voluntary agreement is subject to some of the same disadvantages as adjustment by custom in dealing with the problems of fluid and mobile groups. Since the members of such a group never stand for any long time in the same relations to one another, and since the contacts between particular individuals are highly transient and casual, the psychological attitudes are not developed which can sustain and justify mutual confidence in the face of urgent economic interests of an adverse character. In other words, there is an absence of interests which can be relied on to come into play to soften and dispel conflicting interests, as would often happen in a stable community where a fixed group consisting permanently of the same individuals was bound into a set of lasting relations by cultural, social, and personal ties of a stable character.⁶⁵ Where there is no such fund of basic common interests to give footing to the opposing parties, there are no forces at work to cause one of the parties to make the necessary allowances for the conduct of the other in doubtful cases or to induce the latter to make the sacrifices required by the adjustment, if there seems a chance of obtaining some temporary advantage by violating its terms. The adjustment is thus always highly unstable and practically certain to be overthrown by any of the unpredictable alterations in the situation which are continually taking place within a mobile group.

Even in primitive groups, failure of the mediating agency to effect a satisfactory settlement between the parties is common. Among the Ifugaos disputes are often left to the arbitrament of force, resulting in the outbreak of a "blood-feud" between the families of the parties.⁶⁶ Even when conflict

⁶⁴ Louis Levine, *The Women's Garment Workers* (N. Y., 1924), pp. 233-319.

⁶⁵ Cf. Dewey, *The Public and its Problems*, pp. 39 ff.

⁶⁶ Barton, *op. cit.*, pp. 75-77.

does not openly reach the stage of force, the result is very likely to be determined by the relative power or standing of the parties, or, in other words, by their relative prospects of success should force be resorted to, irrespective of whether such a result is one which the ethical sense of the rest of the community would otherwise approve.⁶⁷ There are levels of society at which such gaps in the system of orderly adjustment are not felt to offend the interests of members of the group generally. A similar state of affairs is still tolerated in international relations. There usually comes a time, however, when the results of such a system become objectionable to that larger part of the group who do not happen to be immediately concerned in any particular dispute. Whether or not any change is made when such a feeling comes into existence depends on the relative values which the section of the community that can make their views effective place on their interest in being able to further their own objectives by coercion, as compared with their other interests which are disturbed when other parties resort to coercion for a similar purpose.)

There is a further defect in the operation of a system of voluntary adjustment of interests which is independent of any connection that system may have with the use of coercion. This is that parties, when left free to adjust their interests by voluntary agreement, may effect an adjustment which disregards the interests of others not immediately parties to the dispute, or which may even be accomplished directly at the expense of the interests of such others. This difficulty is not so apt to arise in a simple society where, apart from the interests canalized by custom, there is no complex interrelation between the interests of all the members of the group. This ceases to be true of many interest-conflicts which lead to disputes in a society of increasing complexity, and particularly of disputes connected with economic interests. Thus a dispute between competitors is almost certain to involve the interests of consumers. A dispute between shippers and carriers is apt to involve the interests of different localities, as well as those of different classes of

⁶⁷ *Ibid.*, p. 17.

producers and consumers. A dispute between employers often involves the interests of their workers. Where such disputes are settled privately by the voluntary action of only the immediate parties, the other interests involved are almost certain to be affected adversely. The settlement, while resolving one conflict, is thus apt to give rise to others and so set in train a whole series of disturbances. For this reason the application of the method of adjustment of interests by voluntary agreement becomes a matter of vastly greater difficulty and delicacy as the interrelations between individuals become more numerous and subtle. The problem of order then presents itself, not as the comparatively simple one of adjusting the interests of two adverse parties, but in the much more complex form of effecting an adjustment between a comparatively large number of parties. Where this is the case, the difficulty of securing adjustment by the direct act of the parties themselves is enormously multiplied. An adjustment that will satisfy any two or more is almost certain to meet with opposition from some or all of the remainder. The only way to break the deadlock is usually by the imposition of some scheme or plan of adjustment emanating from a more or less impartial source, which will give to none of the parties precisely what they desired but which may in the long run satisfy all better than the condition of disorder and uncertainty for which it provides a substitute.⁶⁸)

Sometimes the parties can be brought to adopt such a scheme of adjustment by nothing more than the working of the principle of leadership. The scheme may be presented to them with such skillful appeal to certain of their interests as to overcome the strength of interests which it opposes. What concerns us here,

⁶⁸ It is to be noted that the efforts toward industrial "standardization," referred to above, note 46, as representing the idea of "self-government in industry," call for the organization, and depend upon the continued functioning, of a central organ within the industry, accompanying a more or less authoritative and impartial position, in the form of a committee to formulate rules and preside over their application. P. G. Agnew, "The National Safety Code Program," *Annals of the American Academy of Political and Social Science*, January, 1926. It is also to be noted that in most instances the impulse for the formation of such committees emanated from an outside source, the federal government.

however, is simply the fact that adjustment is almost never possible without such a plan, whatever may be the motives which lead to its adoption. (No fact is more important for an understanding of social processes or of the development of agencies of social control than that a conscious adjustment of interests between numerous parties cannot shape itself initially through the spontaneous action of all the interested parties, but must ordinarily result from the special efforts of some external agency consisting of an individual, or a relatively small number of individuals, charged with the task of surveying the situation as a whole and devising a plan.) There is a tacit recognition of this necessity in the procedure of every public meeting, which does not undertake to draft resolutions as a committee of the whole, but in order that it may have something before it on which to act, appoints a small committee for the purpose of preparing a proposal.

The cardinal error of all anarchist theories, or theories of exclusive reliance on the method of adjustment by voluntary agreement, is that they tend to minimize, if not altogether to ignore, this fact. It has no great importance, of course, for minor conflicts to which there are only two parties, and which involve no interests other than those of the parties. To this class belong a vast number of the situations of daily private life. But in a complex group these are not the situations which raise the most difficult problems of order. The advocate of voluntary adjustment generally assumes that mere intelligence or good will on the part of the persons concerned in a situation will be sufficient to effect all necessary adjustments. This assumption disregards the necessity of any specialized agency or organ of adjustment. Its inadequacy is illustrated by one of the simplest, and at the same time clearest, instances of the need for adjusting complex human relations—the problem of traffic control at a crowded crossing. Such control, to be efficient, practically always requires the presence and directing activity of a specialized agency in the form of a traffic policeman. The best will and highest intelligence in the world on the part of every one of the constant stream of drivers will not guarantee

LABOR PARTIES IN JAPAN¹

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One of the results of the passage of the manhood suffrage law of 1925 in Japan has been the rise of proletarian parties and the election of eight of their candidates as members of the Diet. In the House of Representatives these new members find themselves in the company of half a dozen minor parties and a group of independents, alternately ignored and courted by the two major parties. Their appearance coincides with a time when liberal opinion in Japan favors the two-party rather than the multiple-party system. But the economic significance of the new parties has saved them from the aspersion of merely adding to the confusion of minor groups. Moreover, the failure of Japanese liberals to develop a great party of liberalism invites a new association to seize a vantage ground so long unoccupied.

On the eve of the general election of 1928 the founders of the proletarian parties had reason to hope that careful strategy in the campaign would give the new parties a good start upon the same road that led the Labor party in Great Britain to the leadership of the parliamentary opposition and finally into office. The manhood suffrage act had increased the electorate from 3,341,000 to 12,534,360. Among the nine million new voters are included practically all the male factory toilers and agricultural workers. Here, indeed, is a rich field for proletarian vote-getting.

Both of the major parties are supported by the privileged classes. It is probably true that the Seiyukai, the party now in office, is more representative of the landed interests, while its opponent, the Rikken Minseito (an amalgamation of the Kenseikai and the Seiyuhonto), is more representative of the industrial interests. But both have close relations with the old

¹ All translations of Japanese sources in this article were made by Mr. Sterling Tatsuji Takeuchi.

clan cliques and military interests, and both parties are affiliated with "big business." The Minseito is supplied with funds from the Mitsubishi, the Seiyukai looks to the Mitsui; and each party draws heavily upon the cash boxes of other large commercial enterprises. This does not necessarily signify that capitalists control the parties. It may even mean that capitalists fear the parties. There is scarcely a great industrial undertaking in Japan that has not received some protection or privilege at the hands of the government. Indeed, the sudden collapse of the Takata and Suzuki-Shoten by the meddling of the government indicates one reason for the willingness of business houses to pour funds into the campaign chests of the major parties. These connections are well known in Japan; they are frequently mentioned in the press, and even shouted from the rostrum of the House of Representatives.² Consequently there seems to be a widespread contempt for the venality of both parties. The Japanese people are newspaper readers, and the great dailies have little praise for the major parties. According to the well-edited *Jiji Shimpo*, all of the old parties "make a plaything of politics and treacherously throw dust in the eyes of the nation." The great liberal paper, *Tokyo Asahi*, with a circulation of a million, condemns these parties as "venal representatives of the

² For instance, the veteran statesman, Ozaki-Yukio, in defending his bill forbidding contributions to candidates, in the House of Representatives, recently said: "Parties spend considerable sums of money in ordinary times, and millions of yen at general elections. This is an open secret. The foremost capitalists in Japan are but purveyors to the government. The Mitsui and the Mitsubishi are the conspicuous examples. Most of these plutocrats serve the parties, and, on the other hand, if you examine their wealth, you will find that more than half of it has been made by this service. It is difficult for the parties to raise these millions of yen except by contributions from the plutocrats. And thus men of spotless integrity conspire with a few capitalists for election expenses, and when their party takes office they feel bound to reciprocate." *Kwampo gogai* (Imperial Gazette, extra), Feb. 2, 1927, p. 10. The Mitsui family, to which Ozaki refers, is one of the oldest of the "millionaire families." They control large houses engaged in banking, trading, shipping, mining, and steelworks, ranking in the order named. The Mitsubishi interests include shipbuilding, mining, steelworks, and banking. For an illuminating survey of the economic forces that rule politics, see Takahashi-Kamekichi, *Nippon Shihon Shugi Hattatsu-shi*, or History of Capitalism in Japan (Tokyo, 1928), p. 175-186.

wealthy classes," and the *Osaka Mainichi*, which boasts a circulation of over a million, brands the parties as "corrupt and deteriorating."³

In view of these facts we may well ask why the new parties did not capture more than eight seats in a chamber of 466 members.⁴ The proletarian parties polled barely 4.7 per cent of the vote. The reasons for this rather meagre showing include: (1) absence of class consciousness, (2) scarcity of well-known and experienced candidates, (3) lack of campaign funds, (4) oppression by the government, (5) inertia of voters and their fear of radicalism, and (6) internal dissensions and the failure of the parties to coöperate.

I. ABSENCE OF CLASS CONSCIOUSNESS

The theorists of the proletarian parties contend that ninety-five per cent of the population of Japan belong to the "non-propertyed" class.⁵ In 1927, the number of persons who paid income taxes on two thousand yen or more was 464,742.⁶ The

³ *Jiji Shimpō*, Jan. 25, 1927, p. 2; *Tokyo Asahi*, March 6, 1926, p. 3; *Osaka Mainichi*, Nov. 7, 1926, p. 3.

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RETURNS OF THE GENERAL ELECTION OF 1928			
Party	Candidates	Successful Candidates	Popular Vote
Seiyukai	341	219	4,260,159
Minseito	342	217	4,262,580
Kakushinto	15	4	102,998
Jitsugyo Doshikai	29	4	172,074
Labor Parties	88	8	492,177
Independents	152	14	591,814
Total	967	466	9,881,802

Cf. *Tokyo Asahi*, March 6, 1928, p. 4; *Nichi-nichi Shimbun*, March 4, 1928, p. 4; *Fusen Dai-ichiji no Sosenkyo Keika* (First General Election under the Universal Suffrage Act), May 15, 1928, p. 3. The latter document is published by the Shin Nippon Domei Chosabu, or Research Department of the New Japan Union of Tokyo, a non-partisan scientific organization.

⁵ Cf. Professor Abe-Isao in *Shakai Minshūto Koryo Kaisetsu*, or Explanation of the Principles of the Shakai Minshūto (Tokyo, 1927), p. 6.

⁶ *Okura-sho Dai Gojusan-kai Nempo*, or Treasury Department: 53rd Annual Report (Tokyo, 1928), p. 146.

census shows the number of families to be 11,999,609. It is estimated that, on an average, one person in a family pays an income tax. It thus appears that approximately 464,742 families in a total of 11,999,609, or about 3.8 per cent of the population, have an income of sufficient size to be included in the property-owning class. This is, of course, only an approximation based upon a rather crude method, but it is sufficiently accurate to indicate that there is a large concentration of wealth in the hands of a small per cent of the population. Nevertheless, there appears little evidence of class-consciousness among the wage-earners of Japan. Despite the propaganda of intellectuals like Professors Abe and Oyama and the eloquence of labor and peasant leaders like Suzuki-Bunji and Sugiyama-Motojiro, the workingmen of Japan are not aware of the class-struggle. In the election campaign, the proletarian parties demanded super-taxes on the rich, socialization of industries, legalizing of strikes, liberalizing of tenant rights, and social insurance laws—all of this without awakening a wide response from the classes which are usually attracted by these policies.

Particularly in the country districts, the proletarian parties made little impression. It is true that in these areas the political meetings of the proletarian parties were often attended by larger crowds than the meetings of the major parties. For fifteen years the Nippon Nomin Kumiai, or Japanese Farmers' Union, has carried on a campaign of education. But the agricultural laborers and tenant farmers were apathetic and the Seiyukai candidates reaped the votes. Even Sugiyama, the veteran leader of the Nomin Kumiai, failed to win a seat. Political observers assert that the Japanese peasant, whether land-owner, tenant, or farm drudge, is markedly conservative.⁷ The proletarian parties made their best showing in the large towns and factory centers. But even here a lack of class consciousness is apparent.

⁷ Compare a writer in the *Osaka Asahi*, March 4, 1928, p. 2. One exception to the general lack of class consciousness is found in the *eta*, or outcasts, nearly 1,200,000 in number, who are partially organized in the Suiheisha, or Equality Society.

For more than thirty years labor unions have struggled for existence, while strikes have been severely suppressed by the police. Even today labor unions have no status under the law. In the last few years, bills legalizing them have been projected by the government, but nothing has yet been placed on the statute book. Statistics for 1927 show 423 labor unions, with a total membership of only 284,321, while the laborers in Japan number more than 9,026,536.⁸ In Great Britain the mainstay of the Labor party is the trade unions with their four and a half million members. In Japan the workers lack not only political experience but even the technique of trade-unionism.

II. HANDICAPS OF THE LABOR PARTIES

The proletarian parties have a dearth of well-known and experienced candidates to stand for election, and they lack campaign funds. Indeed the prevailing system of electioneering militates in almost every way against the new parties. The constituencies, all of which return three to five members, cover large areas, with the result that travelling expenses are heavy. The lavish use of decorated posters is expensive; the hiring of halls and telephones is an added burden; the election law requires a deposit of two thousand yen, to be forfeited in case the candidate fails to win a certain percentage of the votes; and, finally, there exists in some constituencies an active competition in bribery. Under law, the campaign expenses of candidates are limited to a sum varying between twelve and fifteen thousand yen.⁹ But it is a common scandal that candidates of all the old parties egregiously exceed this limit. It has been

⁸ *Naimu Tokei-kyoku: Rodo Tokei Yoran*, or Home Office, Bureau of Statistics: Abstract of Labor Statistics (1928), p. 6. Cf. *Rodo Nenkan*, or Labor Year Book (1926), published by the Nippon Rodo Sodomei and Sangyo Rodo Chosasho, p. 11.

⁹ The expenses must not exceed an amount equal to forty sen per voter for the average number of qualified voters in the district. The total amount that a candidate may spend is determined in the following manner: the number of qualified voters is divided by the number of members returned by the district; then forty sen is multiplied by this quotient. *Genko Horei Shuran*, or Compilation of Laws and Ordinances in Force (1927), I, bk. ii, pp. 16-17.

estimated that the average cost of a campaign is as high as fifty thousand yen per candidate.¹⁰

The rivalry in electioneering has proved a heavy drain upon party treasuries. In competition with the extravagant expenditures of the old parties, proletarian and independent candidates must show unusual qualities in order to attract any votes at all. Such a candidate as Abe-Isoo, for years a prominent professor of sociology at Waseda University, author of many books, the father of baseball in Japan, one of the founders of the Social Democratic party of 1901, founder of the Fabian Society in Japan, and the prime mover in the new Shakai Minshūto—such an outstanding candidate has assurance of carrying his constituency, as well as securing election funds from honorable sources.¹¹ A similar advantage is enjoyed by Suzuki-Bunji, the beloved labor leader and co-founder of the Shakai Minshūto. But lesser figures among the proletarian candidates are hard pressed for funds and devices to catch the attention of the voters. In this connection we may recall that the brilliant young leader of the Meiseikai, Tsurumi-Yusuke, attributes his election from the rural constituency of Okayama, not to his widely read books, but to an error of the local newspapers in announcing his aeroplane journey from New York to San Francisco as a trans-Pacific flight! Another shrewd candidate ascribes his success to a deluge of picture post-cards with foreign stamps which he mailed to his constituents from Europe and America. Even these tactics require funds; and, as with the British Labor

¹⁰ See a statement by Tabuchi-Toyokichi in *Kwampo gogai*, May 4, 1928, p. 77. For statistics on election violations, see Saka-Senshu and Miyake-Masataro, *Futsu Senkyo Yoko*, or Commentary on Universal Suffrage Law (Tokyo, 1927). A charge was made in the *Chuo Koron* for March, 1928, that Uchida-Nobuya, in the election of 1924, spent 500,000 yen and purchased votes at the price of 100 to 150 yen per vote. *Japan Weekly Chronicle*, March 8, 1928, p. 281. Cf. Ishikawa-Rokuro, "Internal Scandals of the Political Parties," *Kaizo*, Oct., 1928, pp. 72-78.

¹¹ Professor Abe's election expenses totaled only 5,610 yen. Contributions to the amount of 8,500 were received from admirers even outside of Japan. *Tokyo Asahi*, March 4, 1928, p. 2; *Japan Weekly Chronicle*, March 8, 1928, p. 283.

party, the trade unions are expected to contribute to the campaign expenses of candidates.¹²

Undoubtedly the subversive tactics of the Tanaka government were partly responsible for cutting down the vote of the proletarian parties. In Japan, the government can "make" elections as in various European countries. The first general election under the manhood suffrage law was marred by grave derelictions. Baron Tanaka's assumption of office in April, 1927, had been followed by a wholesale removal of governors to make way for Seiyukai followers who would use their authority over the local police to aid their party at the polls. During the campaign there was systematic oppression of all opposing candidates, but the hand of the home minister fell most heavily on the proletarian parties. Election-workers were arrested and political meetings suppressed on flimsy excuses.¹³ Night after night, the police interrupted the speeches of Oyama-Ikuo, leader of the Rodo Nominto, or Labor-Farmer party. One of the most extreme cases is found in the struggle of Aso-Hisashi to win a seat in Ashio, a copper mining district where labor unionism has had a checkered career. In the prefectural election of 1927, the local union had captured several seats in the council. The Ashio Copper Mining Company now brought severe pressure upon the miners, threatening dismissal, and actually suspending ten employees for political views, while the aid of the police was secured to close public halls and break up evening meetings.¹⁴ It also appears that the mining company contributed funds impartially to both the Seiyukai and Minseito. In general, all of the proletarian parties, as well as the

¹² *Rodo Nenkan*, 1926, p. 48.

¹³ Specific charges were made in the Diet. *Kwampo gogai*, April 27, and 29, 1928, pp. 19-29, 32-35, 38, 68-69. Cf. *Japan Weekly Chronicle*, May 3 and 10, 1928, pp. 538, 540, 542, 567.

¹⁴ Aso-Hisashi, "The Desperate Battle at Ashio," in *Kaizo*, April, 1928, pp. 21-32. This article is considerably deleted; omission signs indicate the gaps caused by the government censor. Aso is the founder of the Nippon Ronoto, or Japanese Labor-Farmer party. A graphic account of the Ashio contest is given in the *Tokyo Asahi*, Feb. 16, 1928, p. 2.

powerful Minseito, suffered under the abuses of the Tanaka administration.

Again, there is little doubt but that the fear of radicalism as well as the inertia of voters partly accounts for labor's meagre returns. All of the proletarian parties are identified with socialism, but they differ widely in degree of radicalism. The Shakai Minshūto, or Social Democratic party, and the Nippon Nominto, or Japanese Farmer party, represent a heterogeneous group of intellectuals, trade-unions, and peasants' societies, with platforms not greatly different from the principles of the Labor party of Great Britain or the Social Democrats of Germany. They stand for a moderate constitutional state socialism. On the other hand, the Rodo Nominto, or Labor-Farmer party, which played a conspicuous part in the election, and was suppressed by the government six weeks later, represented the left wing of labor. It contained a considerable number of communists, and was popularly believed to be a branch of the Third International. The Nippon Ronoto, or Japanese Labor-Farmer party, together with the local parties, attempted to steer a middle course between the right and left wings of labor. In the popular mind the radicalism of the Rodo Nominto was vaguely identified with all the labor parties, despite the energy of the leaders of the Shakai Minshūto in condemning the doctrine of communism. The proletarian parties were accused of receiving financial aid from Russia.¹⁵

The parties also suffered from dissension and lack of coöperation. Eighty-eight proletarian candidates were backed by the seven parties. The Rodo Nominto supported 40 candidates; the Shakai Minshūto, 19; the Nippon Nominto, 13; the Nippon Ronoto, 13; and three local parties, one each. Not only was there diversity of proletarian parties, but some of these groups were as antagonistic toward each other as toward the bourgeois parties. Thus the attempt to prevent proletarian groups from competing with each other was not wholly successful. Japan has a simple form of proportional representation. Each electoral district sends three, four, or five members, and each voter has

¹⁵ Cf. *Japan Weekly Chronicle*, March 8, 1928, p. 285.

but one vote to cast.¹⁶ It is a matter of proper strategy for allied parties to reach some agreement to refrain from placing more than one candidate in any district unless there appears a good chance to elect two or more of the members from that district. Failure to make such agreements in a number of cases resulted in the defeat of proletarian candidates.

Election agreements were concluded between some or all of the proletarian parties in twenty-five districts, while in sixteen no agreements were effected and labor candidates opposed each other. A typical case is the first district of Kanagawa-ken.¹⁷ This district has three seats. The Seiyukai cautiously offered only one candidate; the Minseito offered two; an independent appeared; and two proletarian candidates offered themselves, one for the Shakai Minshūto and one for the Rodo Nominto. An agreement to place only one candidate in the field fell through. If all the proletarian ballots in this district had been cast for the same candidate, he would have secured 19,269 votes, the highest in the district. An analysis of the election returns indicates that if the labor parties had effected agreements in nine districts where their candidates opposed each other, the proletariat would have had a good chance to send seventeen members to the Diet instead of eight.¹⁸ The election of 1928 has served as an object lesson for the unitarians in the

¹⁶ *Genko Horei Shuran* (1927), I, bk. ii, p. 12.

¹⁷ VOTE IN FIRST DISTRICT OF KANAGAWA-KEN IN GENERAL ELECTION OF 1928

<i>Candidates</i>	<i>Parties</i>	<i>Popular vote</i>
Toi	Minseito	18,537
Miyake	Minseito	18,173
Isono	Seiyukai	13,616
Okazaki	Shakai Minshūto	12,522
Shindo	Rodo Nominto	6,747
Hashimoto	Independent	2,939

This chart is constructed from statistics taken from *Fusen Dai-ichiji no Sosenkyo Keika*, May 15, 1928, p. 52.

¹⁸ These districts are: Tokyo, first, second, and third; Niigata, second; Kanagawa, first and second; Osaka, first and fourth; and Hyogo, second. Cf. Susuki-Shigeto, "Election Agreements and the Union of the Proletarian Parties," *Kaizo*, April, 1928, p. 127.

proletarian parties in their campaign for a federation, if not a union, of parties.¹⁹

III. THE RISE OF SOCIALISM AND THE LABOR MOVEMENT

Three elements have contributed to the formation of the proletarian parties—the labor unions, the peasant unions, and a group of intellectuals, many of the latter being graduates and professors of the Imperial University of Tokyo and of Waseda University. The same schism that divides the proletarian parties is found in all of the contributing groups. The rock on which they split is communism. It has sometimes been stated that this disruption is due to a slavish attachment to the ideology of social democracy. In the effort to break down this doctrinairism, Professor Abe has gone so far as to assert that fundamentally socialism, communism, and anarchism are in agreement, that really they are only different roads leading to the same mountain peak.²⁰ This expansive view, however, is not widely shared. The right wing of labor, for instance, utterly rejects close association with the left wing, and the radicals, on their part, demand an over-abundance of expression that tries the patience of the conservatives.

For thirty years or more, socialism has been the creed of the labor unions of Japan. In 1897, Katayama-Sen, who learned his Marxism in the United States, founded the Rodo Kumiai Kiseikai, or Association for Forming Labor Unions, and he soon organized unions among the iron workers and the railway engineers and firemen in Tokyo.²¹ At the same time, Katayama joined with fourteen other young men in the Shakai Shugi Kenkyukai, or Society for the Study of Socialism. Among the group were Abe-Isoo, Kotoku-Denjiro, and Kawakami-Kiyoshi. In 1901, members of this debating society coöperated with the

¹⁹ Compare the articles of Tadokoro-Teruaki, Susuki-Shigeto, and Inomata-Tsunao in *Kaizo*, April, 1928, pp. 120-129; and the symposium, "Is the United Fighting Front of Proletarian Parties Possible?," *Chuo Koron*, Oct., 1928, pp. 75-88.

²⁰ "Separating Point between the Right and the Left," *Kaizo*, April, 1926, p. 73. Cf. *Japan Weekly Chronicle*, May 6, 1926, p. 530.

²¹ Katayama-Sen, *The Labor Movement in Japan* (Chicago, 1918), p. 36.

leaders of the Iron Workers' Union to form a political party under the name of Shakai Minshuto, or Social Democratic party, with a platform demanding the abolition of armaments, universal suffrage, and the nationalization of land and industries.²² Thus at an early date socialism and labor-unionism went hand in hand.

The rising industrial power of Japan saw a menace to capital in the growth of organized labor, while clan rule under the constitution of 1889 sensed an enemy in the "dangerous thoughts" of the young socialists. As a result, the Diet enacted a statute resembling Bismarck's famous act of 1878 to curb the German socialists. The Japanese *Chian Keisatsuho*, or peace police law, of 1900 forbade the attempt to enlist persons in any movement to raise wages, shorten hours, or lower land rents, and gave the home minister power to suppress the meetings of any association which he considered dangerous to the peace and order of the community. Under this legislation, socialism and the labor movement were drastically repressed. Little comfort to Japanese labor was the fact that only a few years previously Social Democrats in Germany had submitted to the presence of policemen on the platform of every meeting—officers who could close the deliberations at any time by standing up and putting on their helmets. Lassalle had proclaimed the universal ballot as the workingman's hope; but in Japan the laborer and the small peasant possessed not even this hope.

The Shakai Minshuto was dissolved by the police on the same day that its manifesto appeared, while the *Yorozu Choho* and three other newspapers were suspended for publishing the declaration of the new party. In the following years a number of socialist societies arose and were suppressed. Syndicalism and anarchism crept into the country, leading to the anarchist trials of 1911 which sent Kotoku and eleven comrades to the scaffold.

²² Professor Abe's account of this party is found in the *Kaikoku Gojunen-shi*, or Fifty Years of New Japan (ed. Fukushima-Yasoroku), II, pp. 955-982. Cf. Sakai-Toshihiko, "History of Japanese Socialist Movement," *Kaizo*, Feb., 1929, pp. 86-100; March, 1929, pp. 46-60. Probably the first attempt to found a Marxian socialist party was that of Tarui-Tokichi, who formed the Shakaito, or Socialist party, at Nagasaki in 1882, promptly suppressed by the government.

on the charge that they had plotted to overturn the régime of the Mikado. Thereafter Marxian socialism made little headway until the Russian revolution of 1917. Labor unions, likewise, were coerced and strikes crushed by the police. It was not until Suzuki-Bunji organized the Yuaikai, or Friendly Society of Workers, and not until the business boom of the World War caused a scarcity of labor, that trade-unionism revived.

The Yuaikai, like the early labor unions, was promoted by the intellectuals. Suzuki, a graduate of the Tokyo Imperial University, had begun by holding workers' meetings in a Unitarian chapel.²³ The Tokyo street-car strike of 1911 provided an opportunity for promoting a federation of all labor unions. When the World War brought great industrial activity, the unions won easy victories in forcing employers to concede higher wages and shorter hours. The federation thrived. In 1921, when the name was changed to Nippon Rodo Sodomei, or Japanese Federation of Labor, there were 155,000 members. Suzuki-Bunji twice visited the United States during the World War, and some observers have asserted that his admiration for Samuel Gompers led him to model the Yuaikai upon the American Federation of Labor. However this may be, there has always been a large element in the organized labor of Japan that opposes federation; seldom have more than half of the labor unions at any time joined the federation. At the same time, allied local federations, like the Kwanto Federation, embracing the great eastern industrial district, have been restive under central control.

Besides the problem of federation, two other questions brought dissension into labor ranks. One was the radical movement; the other was the attempt to form a political party. The Russian experiment awakened unusual interest among the intellectuals in Japan, and the rice riots of 1918 increased the democratic spirit. In 1919 Yoshino-Sakuzo, a professor of

²³ Suzuki-Bunji, "History of the Labor Movement in Japan," in *Shakai Keizai Tai-kei*, or Cyclopedia of Sociology and Economics (Tokyo, 1927), III, p. 271.

political science in the Imperial University of Tokyo, aided by able writers in the *Tokyo Asahi*, began his significant campaign against militarism; and in the same year enthusiastic intellectuals organized the Shinjinkai, or Young Men's Society, to study liberal government and socialism.²⁴ Marxian socialism and pacifism became popular, students' clubs were formed, and even a Federation of Students' Associations. The student agitation had its counterpart in the labor unions. Many local unions were alleged to be bolshevist in doctrine, and even the Nippon Rodo Sodomei, in 1922, adopted resolutions demanding that the government evacuate Siberia and open negotiations with Soviet Russia.

A change in attitude soon appeared. The great earthquake and fire of September, 1923, mark the turning-point in the outlook of the Federation of Labor. The organization was carried along on the wave of reaction which witnessed many brutal scenes enacted by the police and ruffian bands of the Kokusuikai, or National Essence Society, ranging from raids on professors' houses and seizure of copies of Karl Marx's *Kapital* to the cold-blooded murder of Osugi-Sakae and his family by Captain Amakasu. Even before the earthquake, the police had suppressed the alleged Japanese branch of the Third International. The home ministry, however, was not satisfied with its powers to break up student and communist organizations, and in 1925, against the protest of a few liberals like Ozaki, it secured the passage of the *Chian Ijiho*, or peace preservation law, forbidding the existence of any association the object of which was to "change the fundamental character of the state or to deny the system of private property."²⁵ The

²⁴ Hayashi-Fusao, "Students' Social Science Activities," *Kaizo*, Jan., 1925, pp. 276-280; Aso-Hisashi, "Social Movements among the Students," *ibid.*, Sept., 1925, pp. 162-170; Akamatsu-Katsumaro, "Historical Sketch of the Shinjinkai," *ibid.*, June, 1928, pp. 68-74. Cf. *Japan Weekly Chronicle*, Oct. 1, 1925, p. 420.

²⁵ Art. i of this law reads: "To organize an association with the object of changing the fundamental character of the state or to deny the system of private property, or to join such an association with knowledge of the nature of its purpose, shall be punished by imprisonment of not more than ten years."

new law was energetically applied in an attempt to save the country from the much-feared Bolshevik propaganda.

The conservatives in the Nippon Rodo Sodomei determined to eject all communists from the federation, and were able to carry a vote to dissolve a local federation in Kwanto as being too radical.²⁶ The expelled unions joined with other dissenters to form the Nippon Rodo Kumiai Hyogikai, or Japanese Council of Trade Unions, which became the nucleus for the left group in the labor movement. This episode was not, however, the end of the disintegration, for in October, 1925, a number of unions seceded from the federation in protest against the extreme treatment meted out to the communists. The seceders formed the Rodo Kumiai Sorengo. Finally, in November, 1926, when the struggle over the formation of a unified political party ended in the withdrawal of the Nippon Rodo Sodomei from the newly formed Farmer-Labor party, Aso and his adherents left the parent federation and founded a new group of unions under the name of Nippon Rodo Kumiai Domei, or Japanese Federation of Trade Unions. Thus the year 1926 saw organized labor divided into four camps—one representing the right, two the center, and one the left wing of the labor movement.

IV. FORMATION OF THE LABOR PARTIES

The schism in labor unionism was carried over to the proletarian parties. For years the Nippon Rodo Sodomei had kept out of politics, not in imitation of the American Federation of Labor, as has often been asserted, but because of its inherent

Genko Horei Shuran, II, bk. x, p. 17. The *Chian Keisatsuho*, passed in 1900 and amended in 1926, provides in Art. viii: "In case an association falls within the categories of Section 1, the Minister of Home Affairs may prohibit the same. However, in this case, if a person claim an infringement of his rights by alleged illegal acts, he may bring suit in the administrative court." *Genko Horei Shuran*, II, bk. x, p. 16.

²⁶ *Tokyo Asahi*, March 15, 1925, p. 2; March 26, 1925, p. 7; April 16, 1925, p. 11. For this phase of the labor movement, see Matsuoka-Komakichi, "The Truth about the Rodo Sodomei Dissension," and Yamamoto-Kenzo, "Our Point of View," *Kaizo*, June, 1925, pp. 139-143, 145-148. Cf. *Rodo Nenkan*, 1925, pp. 74-76, and *Nippon Rodo Nenkan*, 1926, published by the Ohara Shakai Mondai Kenkyusho, or Ohara Institute for Social Research, p. 218.

caution as well as its appreciation of the futility of political activity when the working-class was disfranchised. Another reason for repudiation of political activity was the manner in which the government ignored the labor unions in the appointment of delegates to the International Labor Conference at Geneva. Resentment of this treatment had led the Rodo Sodomei to refuse all recognition of the International Labor Organization. But the announcement of the Yamamoto government after the earthquake of 1923 that a universal suffrage bill would be introduced in the Diet prompted the Rodo Sodomei to reverse its policy, and to undertake the formation of a political party.²⁷

Under the influence of such leaders as Professor Abe, plans were studied for a party that should include most of the labor unions, the peasant unions, and the intellectuals, and which should be organized somewhat on the model of the British Labor party. Local labor unions responded enthusiastically.²⁸ Indeed, two districts, early in 1925, went ahead of the central organization and formed local parties. The copper miners of Ashio established the Kominto, or Citizens' party, while the workers in the government-managed Yawata Steelworks set up the Kyushu Minkento, or Kyushu People's Constitutional party. In commenting on these local parties at the time, Professor Abe declared that their rise proved that the new political movement was growing from the bottom rather than the top.²⁹

In the negotiations to create a unified party, the Nippon Nomin Kumiai, or Japanese Farmers' Union, played the leading rôle. This union represented 100,000 tenant farmers who de-

²⁷ *Rodo Nenkan*, 1925, pp. 132-140. Cf. *Japan Weekly Chronicle*, Jan. 17 and 24, 1924, pp. 79, 121; Oct. 23, 1924, p. 575; Dec. 26, 1924, p. 856.

²⁸ For instance, favorable action was taken by the Kwanto Domei. *Tokyo Ashai*, Oct. 6, 1924, p. 4. The agency of the intellectuals in promoting a proletarian party at this time was the Seiji Kenkyukai, or Society for the Study of Politics. Cf. Shimanaka-Yuzo, "Organization of the Seiji Kenkyukai," *Kaizo*, Jan., 1925, pp. 254-258; Aono-Kikichi, "Origin of the Proletarian Parties," *ibid.*, June, 1925, pp. 104-111; "The Proletarian Party," *Japan Weekly Chronicle*, April 30, 1925, pp. 549-550.

²⁹ "Rise and Growth of the Proletarian Parties," *Kaizo*, June 1925, p. 75. Cf. *Japan Weekly Chronicle*, June 4, 1925, p. 706.

sired to secure, among other things, an equitable tenancy law. As early as February, 1924, the Farmers' Union made proposals for an all-Japan proletarian party. Eventually most of the labor unions responded, and preliminary meetings were held in August and October, 1925.³⁰ Unfortunately, the Rodo Sodomei and the radical Hyogikai, or Japanese Council of Trade Unions, came to blows over the question of the exclusion of the Seiji Kenkyukai, an organization of intellectuals which was accused of communist opinions. As a result, on the eve of the inauguration of the new party, the Rodo Sodomei withdrew its support; the Hyogikai followed the example of their opponents; and the new party was launched by the center group alone, representing only thirty-five unions with 140,000 members. It was christened the Nomin Rodoto, or Farmer-Labor party. The platform of thirty-four articles was moderate and dignified, with no advocacy of communism, no announcement of the proletarian dictatorship, not even anything about nationalization of property. It advocated parliamentary action rather than direct action, and demanded constructive reforms such as reduction in armaments, tenant rights, social insurance, the legalization of strikes, and the collective bargain.³¹

Long life was not bestowed on the new party. A few hours after its birth, the home minister in the Kenseikai cabinet ordered its suppression, on the ground that, although the radicals had withdrawn, the party actually harbored communists and cherished a secret platform of communistic principles.³² While the dissolution of the Nomin Rodoto was denounced both in the press and in the Diet as an infringement of liberty, the public had small sympathy for the defunct party.

³⁰ For accounts of the preliminary meetings of the Nomin Rodoto see a symposium on "Problems of Nomin Rodoto," *Kaizo*, Jan., 1926, pp. 31-58. The article by Koiwai-Akira entitled "Preparatory Period of the Nomin Rodoto" is particularly noteworthy. Cf. Abe-Isoo, "Rise and Growth of the Proletarian Parties," *Kaizo*, June, 1925, p. 75-82.

³¹ *Nippon Rodo Nenkan*, 1926, p. 262. Cf. *Tokyo Asahi*, Nov. 30, Dec. 1, and 2, 1925, pp. 1, and 2. *Japan Weekly Chronicle*, Dec. 10, 1925, p. 742.

³² *Tokyo Asahi*, Dec. 4 and 6, 1925, p. 4. Cf. *Japan Weekly Chronicle*, Dec. 10, 1925, p. 747.

The way was now open for a party composed wholly of the right and center factions of labor. Such a party was launched in March, 1926, under the name of Rodo Nominto, or Labor-Farmer party. It represented the joint efforts of the Nippon Nomin Kumiai, the Rodo Sodomei, a large group of labor unions, and a sprinkling of intellectuals. The platform was a most moderate document, indeed, so moderate that the Home Minister could find little excuse for a dissolution order.³³ This auspicious inauguration of the party, however, did not bring harmony. The first split occurred in the ranks of the Nomin Kumiai, or Farmers' Union, when a conservative group who saw a fundamental incompatibility between the rural and the city worker withdrew and formed a separate party under the name of Nippon Nominto, or Japanese Farmers' Party.³⁴ This secession took out of the united party nearly fifty thousand farmers. Within the ranks of the Rodo Nominto friction arose between the Rodo Sodomei and the Farmers' Union. The question at issue was the admission of four organizations accused of communism. When the Rodo Sodomei was voted down and radicals began to enter the party, the defection of the Federation and many local unions was but a question of time.³⁵ At the meeting of the central committee in October withdrawals came so rapidly that within twenty minutes only the delegates of the Farmers' Union and the Potters' Union were left.³⁶

The third venture of the Rodo Sodomei in the political arena

³³ *Tokyo Asahi*, March 5, and 6, 1926, pp. 3, and 5; *Nippon Rodo Nenkan*, 1927, p. 145. Cf. *Japan Weekly Chronicle*, March 11, 1926, p. 296.

³⁴ *Tokyo Asahi*, July 6, 1926, p. 2; *Japan Weekly Chronicle*, July 8, 1926, p. 40; Oct. 28, 1926, p. 515. Cf. Tsuyama, *The Present Condition of the Nippon Nominto*, "Kaiho," Dec., 1926, pp. 15-16.

³⁵ *Tokyo Asahi*, April 19, and 20, 1926, p. 2; *Jiji Shimpō*, April 20, 1926, p. 4. *Japan Weekly Chronicle*, April 29, 1926, p. 503. The four organizations were the Nippon Rodo Kumiai Hyogikai, or Japanese Council of Trade Unions; the Musansha Kyoiku Domei, or Proletarian Educational League; the Suiheisha Musan Domei, or Suiheisha Proletarian League; and the Zenkoku Musan Seinen Domei, or All-Japanese Proletarian Young Men's Union. For accounts of the dispute from the pens of Abe, Akamatsu, Oyama, Aso, and Yamakawa, see *Kaizo*, Dec., 1926, pp. 51-69, and *Chuo Koron*, Dec. 1926, pp. 105-136.

came a few weeks later when, under the leadership of Suzuki-Bunji, it accepted the call of Professors Abe, Yoshino, and Horie to join with the intellectuals in forming a party on the British model. The new organization took the name of Shakai Minshūto, or Social Democratic party. Its platform was practically the same as that adopted by the Rodo Nominto in the preceding March.³⁷ This was not the end of party making. Confusion was further increased when Aso defied the leadership of Suzuki-Bunji and led the Japanese Miners' Union, 14,000 strong, out of the Rodo Sodomei. Joining a group from the Farmers' Union, the miners organized the Nippon Ronoto, or Japanese Labor-Farmer party, of which the aspiring Aso took the presidency.³⁸ Thus, within a year, the proletarian party had broken into four new organizations. At the same time a number of local labor parties were established.

The bitter quarrel that wrecked the first two proletarian parties is not to be ascribed solely to the vanity of the labor leaders. It is true that a comparison of the party platforms fails to indicate any great difference in principles between the Shakai Minshūto and the radical Rodo Nominto. But it was commonly believed in Japan that the moderation displayed in the platforms of both the Rodo Nominto and the Nippon Ronoto was merely a disguise to avoid prosecution under the peace police law and the peace preservation law, and that the real principles of the parties included revolutionary socialism and direct action. Even the conciliatory Professor Abe, who holds no brief against the class struggle, condemned the com-

³⁷ For accounts of the inauguration of the Shakai Minshūto, see *Jiji Shimpō*, Nov. 20, 1926, p. 2; Dec. 5, 1926, p. 2; *Tokyo Asahi*, Nov. 21, 1926, p. 3, Dec. 5, 1926, p. 2; *Japan Weekly Chronicle*, Dec. 2, 1926, p. 664. The Chinese characters in the words "Shakai Minshuto" (the party of 1901) indicate a socialist party dedicated to the mastership of the people; while the characters in the words "Shakai Minshūto" (the present party) imply simply a socialist party for and by the masses, or people. The latter name avoids any charge of disrespect to the Emperor.

³⁸ *Tokyo Asahi*, Dec. 10, 1926, p. 5. A translation of the account of Suzuki-Bunji regarding the defection of Aso from the ranks of the Federation, originally published in the *Jiji Shimpō*, is found in the *Japan Weekly Chronicle*, Dec. 16, 1926, p. 721.

munists in the proletarian parties for the methods that they proposed to employ in behalf of the social democracy.³⁹ The difference between the Second International of Amsterdam and the Third International of Moscow, between the French socialists and syndicalists, between the Russian Mensheviks and Bolsheviks, is thus again revealed in the proletarian disputes in Japan. It is the universal struggle, waged in all countries, between the revisionists who aim at a state socialized by constitutional processes and the radicals who are not so particular as to how the revolution comes.

V. PLATFORMS OF THE PARTIES

New parties are apt to take their platforms very seriously. This is eminently true of the Shakai Minshūto, which has established a school for educational propaganda and has published an excellent series of tracts expounding the ideals of the party. Its program is set forth in a formal declaration of principles and a platform. The former indicates a philosophy of political action in the following words: "(1) We are convinced that a sound national life can be secured by ushering in political and economic systems which are primarily calculated to advance the interests of the hardworking classes (*kinro kaikyū*) and are determined to do our best to attain this end. (2) We regard the capitalistic methods of production and distribution as deterrent to the development of a sound national life, and are consequently determined to secure their reform by legitimate means. (3) We are opposed both to the existing political parties which represent the interests of the privileged class and to radical parties which disregard the process of social evolution." The platform in outline form includes⁴⁰: (1) complete realization of universal suffrage; (2)

³⁹ Cf. "Disruption of the Rodo Nominto is not a Catastrophe," *Kaizo*, Dec., 1926, p. 52. See also Yoshino-Sakuzo, "The Road to be Taken by our Proletarian Parties," *Chuo Koron*, Jan., 1927, pp. 167-223.

⁴⁰ The platform is published on the covers of the *Shakai Minshūto Pamphlets*. In the pamphlets it is explained that realization of universal suffrage means: (1) lowering the age limit for voters to twenty-one; (2) woman suffrage; (3) public holiday to allow employees to vote; (4) modification of residential require-

reform of the House of Peers; (3) removal of restrictions on the freedom of speech, assembly, and association by (a) repeal of the peace preservation law, (b) revision of the peace police law, (c) revision of the press law; (4) reform of the military administration; (5) popular control of diplomacy; (6) reform of national finance by (a) graduation of the property tax, income tax, and inheritance tax, (b) abolition of the consumption tax on necessities of life, (c) extension of banking facilities for the common people; (7) reform of administration by (a) reorganization of local agencies, and (b) improvement in sanitary regulations; (8) reforms in education by (a) revision of the financial support of the public school system, (b) democratization of the universities, (c) abolition of bureaucratic interference in education; (9) socialization of certain industries⁴¹; (10) reform of the land system; (11) a program of labor legislation providing for (a) legal recognition of labor unions and of the right to strike, (b) minimum wage law, (c) revision of the factory law, the mining law, and the seamen's law, (d) protective legislation for the building trades, (e) faithful execution of the treaties of the International Labor Conferences; (12) a farm tenancy law providing for (a) establishment of tenant-farmers' rights, and (b) rationalization of tenant-farmers' rents to landlords; (13) a law for the protection of salaried men; (14) abolishment of legal and economic discrimination against women; and (15) social legislation providing for (a) unemployment, sickness, workingmen's compensation for injuries, and old age pensions, (b) improvement in medical and child-birth agencies, and (c) housing.

The Nippon Nominto, or Japanese Farmers' party, which seceded from the Rodo Nominto in July, 1926, adopted a platform proclaiming its faith in parliamentary government and emphasizing the necessity for an adequate agricultural-tenant

ments, and (5) abolition of the 2,000 yen bond for candidates. Cf. *Japan Weekly Chronicle*, Dec. 16, 1926, p. 723; Jan. 20, 1927, p. 57.

⁴¹ In the *Shakai Minshūto Pamphlet No. 3* it is explained that the ultimate aim of the party is to secure government ownership of mines, forests, and all large industries.

act.⁴² The more radical Nippon Ronoto, or Japanese Labor-Farmer party, while avowing belief in constitutional processes, proposed a list of reforms much like those of the Shakai Minshūto, but went further in a demand for the abolition of military training of students and for the regulation of food prices by the government.⁴³ Likewise the program of the now defunct Rodo Nominto, while not going into the same detail as that of the Shakai Minshūto, was bolder in demanding the abolition of all discriminations against subject races and the reduction of the army and navy. The statement of principles plainly called for parliamentary rather than direct action. This platform was the original program of the proletarian parties as drafted in March, 1926, when there were prospects of a united party on this basis. Down to its dissolution in 1928, the Rodo Nominto kept the original platform. But it was commonly believed, and was alleged by the government when the party was dissolved, that its published program was only a cover for anti-parliamentary principles.

The parties advocating the principles and policies that we have just described won 4.7 per cent of the popular vote in the general election of 1928.⁴⁴ An analysis of this poll will indicate

⁴² Tsuyama, "The Present Condition of Nippon Nominto," *Kaiho*, Dec. 1926, p. 15. Cf. *Tokyo Asahi*, Dec. 10, 1926, p. 3; *Japan Weekly Chronicle*, Dec. 16, 1926, p. 723. It should be noted that in popular speech the name Nippon, or Nihon Nominto, was shortened to Nichinoto; Nippon Ronoto, to Nichiroto; and Rodo Nominto, to Ronoto.

⁴³ *Nippon Rodo Nenkan*, 1927, p. 216.

⁴⁴ PROLETARIAN PARTIES IN THE ELECTION OF 1928

<i>Parties</i>	<i>Popular Vote</i>	<i>Candidates</i>	<i>Members Returned</i>
Rodo Nominto	192,580	40	2
Shakai Minshūto	128,880	19	4
Nippon Ronoto	86,795	13	1
Nippon Nominto	46,460	13	0
Kyushu Minkento	23,015	1	1
Minshu Shinto	8,314	1	0
Kwansei Minshūto	5,953	1	0
Total	491,997	88	8

Fusen Dai-ichiji no Sosenkyo Keika, May 15, 1928, p. 41. The last three parties are local proletarian parties. The Kyushu Minkento, or Kyushu Demo-

the relative popular strength of the right, center, and left groups of the labor movement. Foremost among the proletarian parties as a vote-winner stood the Rodo Nominto, the most radical of all the parties. Indeed the party charged with communism received, in spite of all the governmental abuse, 192,580 votes—the largest support given to any proletarian party. The center of the labor movement, represented by the Nippon Ronoto and the three small local parties, won a total of 124,077 votes. And the right wing of labor, including the Shakai Minshūto and the Nippon Nominto, secured a total of 175,340. The figures indicate how evenly the proletarian camp is divided between the left and right wings. A question arises whether the showing of the radical Rodo Nominto might not have been better had it not suffered so heavily under the oppressive tactics of the government. Accounts of the election show that the Home Office, under the administration of Dr. Suzuki, systematically hounded the left wing of labor. In Kagawa-ken, where Oyama ran on the radical ticket against the finance minister in the Seiyukai cabinet, the radical candidate was constantly harrassed, his headquarters were raided, his canvassers arrested, his political meetings broken up, and his speeches rudely interrupted by the police.⁴⁵ The Rodo Nominto candidates were so widely intimidated that the party filed a complaint in the Tokyo local court against Dr. Suzuki.⁴⁶ On the other hand, if Bismarck's oppressive law of 1878 actually caused an increase rather than a decrease in the number of German socialists, it may be true that some of the votes cast for the Rodo Nominto can be explained by the psychology of resistance.

If we look for the source of the support of the radical Rodo Nominto, election statistics show that this party drew more heavily from the rural rather than from the urban districts;

cratic Constitutional party, was organized in the second district of Fukuoka-ken. The Minshu Shinto, or Progressive Democratic party, supported a candidate in the second district of Kanagawa-ken, and the Kwansei Minshūto, or Kwansei Democratic party, in the second district of Gifu-ken.

⁴⁵ Oyama-Ikuo, "How the Rodo Nominto Fought the Election in the Second District of Kagawa-ken," *Kaizo*, April, 1928, pp. 2-20.

⁴⁶ *Tokyo Asahi*, Feb. 16, and 17, 1928, p. 2.

while the Shakai Minshūto, which depends upon the Rodo Sodomei and the intellectuals, found its support chiefly in urban districts.⁴⁷ In spite of the well known conservatism of the farmers, rural districts gave the Rodo Nominto 68,844 votes, and rural-urban districts contributed 82,051. It is true that rural districts gave the right and center parties 81,851 votes. Nevertheless the vote which the Rodo Nominto secured from the rural and semi-rural districts is significant. The principal support of the Rodo Nominto in the rural districts came from the rump of the Nomin Kumiai, or Farmers' Union, then about 60,000 strong. As we have already seen, the most conservative group of the Nomin Kumiai left the party in 1926, reorganized themselves as the Zen Nippon Nomin Kumiai, or All-Japan Farmers' Union, and established the Nippon Nominto, or Japanese Farmers' party. This union claimed a membership of 50,000, a larger number than the votes received by its party in the election. The second secession from the Farmers' Union, led by Sugiyama himself, was organized in 1928, as the Zenkoku Nomin Kumiai, or All-National Farmers' Union. It claimed a membership of 60,000, and its support was thrown to the Nippon Ronoto.

The chief political interest in the rural districts is the question of tenant rights, of which there is great complaint. Tenancy in Japan seems to be on the increase; and both of the major

⁴⁷ RURAL AND URBAN VOTE OF THE PROLETARIAN PARTIES

<i>Parties</i>	<i>Rural Districts</i>	<i>Urban Districts</i>	<i>Rural-Urban Districts</i>
Nippon Nominto	28,652		11,565
Shakai Minshūto	14,721	91,901	16,855
Nippon Ronoto	32,526	13,016	37,485
Kyushu Minkento		23,015	
Minshu Shinto			8,315
Kwansei Minshūto	5,952		
Rodo Nominto	68,844	36,152	82,051
Total	150,695	164,084	156,271

The parties in this table are arranged in order of their position from the right to the left. These statistics are compiled from *Fusen Dai-ichiji no Sosenkyo Keika*, May 15, 1928, pp. 50-78.

parties have been tardy in promoting legislation on the subject.⁴⁸ Since the demand for tenant-rights is almost the exclusive political interest of over two million voters, the problem of strategy that confronts the left and right wings of labor is apparently one that depends upon the legislative accomplishments of the major parties. A naturally conservative countryside, if satisfied on this question, would offer small hope to the party of the city-worker.

VI. THE PROLETARIAN "BLOC" IN THE FIFTY-FIFTH SESSION

Diversity of parties is not an insurmountable bar to a strong parliamentary front. The nature of a modern legislature is such as to invite group action even among stubborn independents. Thus a cohesive parliamentary bloc may be formed by the members of quarreling parties. This holds true even in France, Poland, and the Baltic states, where party organizations throughout the country pull the wires that control their puppets on the parliamentary stage. Likewise in Japan, at the opening of the first session of the Diet under the manhood suffrage act, a powerful incentive to union of the proletarian parties was found in the threatened deadlock of the two major parties. In such event, the labor parties would constitute a large element in the group that held the balance of power. Leaders of the Shakai Minshūto wished to make the most of this opportunity, and at least to form a working agreement between the labor parties. There was opposition in both the Shakai Minshūto and the Nippon Ronoto against alliance with the Rodo Nominto unless all traces of communism were expelled; nevertheless a joint committee of the three labor parties represented in the Diet was formed.⁴⁹

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TENANCY IN JAPAN

<i>Land Owners and Tenants</i>	<i>Census of 1912</i>	<i>Census of 1925</i>
Landlords owning over 50 cho (122 acres)	2,932	4,293
Families cultivating their own lands	1,763,840	1,725,034
Families cultivating rented land	1,497,820	1,525,656
Families cultivating both kinds	2,176,391	2,297,909

Naikaku Tokeikyoku: Nippon Teikoku Tokei Nenkan, or Cabinet Bureau for Statistics; Statistical Year Book of the Japanese Empire (1927), p. 79.

⁴⁹ *Tokyo Asahi*, Feb. 26, 27, 28, March 2, 3, 6, and 10, 1923, p. 2.

Two questions of tactics were involved in these negotiations. One concerned the problem of uniting the new parties, either outside or inside of Parliament. The second concerned the problem of parliamentary coöperation with bourgeois parties. The latter problem has always touched upon fundamentals in the history of socialism. Should the new parties vote with the old parties for "reform" measures? A few years before the World War, August Bebel excused the Social Democrats in the German Reichstag who had voted with the government for a grant of universal suffrage to Alsace-Lorraine by exclaiming: "We have not capitulated. The government has come to our convictions!" The Shakai Minshūto leaders hoped to eliminate the embryonic stage of social democracy by immediate participation in the process of law-making. "There are two ways," said Suzuki-Bunji. "The first is to use the legislature merely as a place for the propaganda of our views, and to consider the accomplishment of immediate reforms as secondary; the other aims at immediate reforms, leaving propaganda and the exposure of the corruption of the existing parties as our secondary object. The first method is that of the communists—the method of Lenin and Stalin. The second is the method of Ramsey MacDonald and the British Labor party. It shall be our model."⁵⁰

There was a rule of the House of Representatives that resolutions could be introduced only upon the signature of twenty members. There was also the requirement that only a party or group having twenty-five members could meet with the inter-party conference to arrange the agenda of the House. It was necessary to coöperate with the independents and other minor parties if the proletariat expected to be active members of the House. In order to emphasize their identity as a group of parties, the Shakai Minshūto proposed that the proletarian bloc should introduce its own resolution of no-confidence. The other parties rejected this proposal because it required coöperation with the independents and other minor parties; and, thus, reluctantly

⁵⁰ "The Parliamentary Front of the Proletarian Members," *Kaizo*, April, 1928, pp. 152-177.

the Shakai Minshūto agreed to the plan that the bloc should support the Minseito resolution which required no coöperation but simply voting at the proper time for the overthrow of the Tanaka government.⁵¹

The Shakai Minshūto, some time later, proposed that the proletarian bloc should attempt to secure a conference of all the opposition parties in order to have a hand in the framing of the resolution of censure and to promote a program of "reform" legislation, including a labor union bill, a farm-tenancy bill, and a social insurance bill, together with amendments for enlarging the electorate and suppressing the restrictions on free speech.⁵² This scheme, however, was vigorously opposed by the representatives of the Rodo Nominto. In their opinion a vote for the Minseito resolution to overthrow the Tanaka cabinet was as far as the proletariat should go; conference with the old corrupt parties was dangerous business; and it was even intimated that the Shakai Minshūto had improper motives in proposing it. In the end, the Shakai Minshūto succeeded in securing an agreement from the joint committee instructing the parliamentary members to hold a conference, but only upon the question of the procedure for overthrowing the Tanaka cabinet.⁵³

The invitations for the all-opposition parliamentary conference were duly sent. It was to consist of six Minseito members, three Kakushinto members, four proletarian members, and all of the independents. Leaders in the Minseito were not greatly impressed; they were soon to commit themselves to an alliance with the small Meiseikai led by Tsurumi. But some of the younger members of the party insisted on attendance, and it was finally decided that the Minseito should be represented informally by a few individuals. The conference met in

⁵¹ *Tokyo Asahi*, March 13, and 24, 1928, p. 2. Cf. *Japan Weekly Chronicle*, March 1928, pp. 346, 378, 379; April 5, 1928, p. 406.

⁵² *Tokyo Asahi*, April 5, 1928, p. 2. Cf. *Japan Weekly Chronicle*, April 12, 1928, p. 435.

⁵³ *Tokyo Asahi*, April 13, and 14, 1928, p. 2; *Osaka Mainichi*, April 14, 1928, p. 1. Cf. *Japan Weekly Chronicle*, April 19, 1928, p. 468.

the library of the House of Representatives five days before the opening of the 55th session of the Diet.⁵⁴ Besides the representatives of the proletarian parties and of the Minseito, there were in attendance only two members of the Kakushinto and only one independent. The conference resulted in no agreement, for the Minseito representatives had no authority to make promises. But there was friendly assent on both sides that similar conferences ought to meet frequently.

In the 55th session of the Diet, the proletarian parties considerably enhanced their prestige. It is true that they played only a small rôle in the balance-of-power group. Tsurumi and his group of eight liberals won the technical advantage of participating jointly with the powerful Minseito. Nevertheless, the proletarian parties impressed their entity upon the legislature and the nation. In the ballot for speaker, they gave their votes for Professor Abe.⁵⁵ Treating the House of Representatives as a forum of public opinion, the labor members called the nation's attention to the abuses of the government, the suppression of free speech, the injustice to the workingmen by the failure to legalize labor unions and the collective bargain, the disgrace of ignoring the international labor treaties, and the injustice suffered by tenant-farmers who lack adequate tenant rights. They addressed embarrassing interpellations to the ministers regarding the negligence of the government in not giving adequate police protection to the political meetings of the opposition parties, and regarding the unfair interference of Minister Suzuki.⁵⁶ They made able arguments to back their contention that the Tanaka government was conducting an unholy military intervention in Shantung. Bills providing for

⁵⁴ For accounts of the conference, see *Tokyo Asahi*, April 18 and 19, 1928, p. 2; *Osaka Mainichi*, April 19, 1928, p. 3. Cf. *Japan Weekly Chronicle*, April 26, 1928, p. 496.

⁵⁵ *Kwampo*, April 21, 1928, p. 556. On the second ballot, Mizutani, Yamamoto, Kawakami, and Asahara left the chamber. Cf. *Tokyo Asahi*, April 21, 1928, p. 2.

⁵⁶ In particular, the speeches of Nishio-Suyehiro, Kawakami-Jotaro, and Kamei-Kanichiro. *Kwampo gogai*, April 26, 1928, pp. 31-35; May 6, 1928, pp. 97-100. Cf. *Japan Weekly Chronicle*, May, 1928, pp. 541, 573, 615.

remedial legislation were introduced.⁵⁷ They also supported Ozaki's resolution impeaching the government's interference in the election—a resolution which, even before its adoption, caused the resignation of the intransigent home minister.⁵⁸ And they supported the Minseito-Meiseikai resolution of censure against the Seiyukai government.⁵⁹

The tactics of the old parties were thoroughly discredited. In devious ways the Seiyukai won over, or bought over, as the opposition claimed, several independents, and even some members of the Minseito. Still the margin was too narrow to permit a test of strength. The session witnessed a scramble between the two major parties to secure the support of the independents, and the Diet was adjourned amidst the almost universal condemnation of both parties by the liberal press.⁶⁰

VII. PARTY CONTROL OF PARLIAMENTARY MEMBERS

Is the proletarian member of the legislature the representative of all the people or merely the spokesman for labor? Legally he is the representative of the people, but practically he may be only the agent of the labor organization which secured his

⁵⁷ For instance, Suzuki-Bunji introduced bills regarding health insurance and to amend the manhood suffrage law by lowering the age requirement from twenty-five to twenty, and to reduce the limit of campaign expenses by one-half. *Kwampo gogai*, May 4, 1928, p. 2.

⁵⁸ *Kwampo*, April 29, 1928, p. 53; May 5, 1928, pp. 84–85. Cf. *Japan Weekly Chronicle*, May 10, 1928, pp. 570, 575.

⁵⁹ *Kwampo gogai*, May 6, 1928, pp. 119–123; May 7, 1928, p. 125. Cf. *Japan Weekly Chronicle*, May 17, 1928, p. 615.

⁶⁰ "The Tanaka cabinet, which scandalously besmirched the general election under the universal suffrage law by its irregularities, forfeited its right to meet the extraordinary session of the Diet, and yet the Opposition parties failed to defeat it after all the hubbub. . . . The Opposition had the majority of the nation on its side and therefore it ought to have proceeded regardless of the attitude of the other parties. Unfortunately it emulated the Government in its indulgence in tricks." *Tokyo Asahi*, May 6, 1928, p. 2. "The meanness of the Government cannot be too strongly condemned. On the other hand, the Minseito cannot escape its share of responsibility for bungling the no-confidence resolution. In an unguarded moment it suffered the motion to be deferred for debate to the last day of the session, misled by the quibbling attitude of the Meiseikai. . . . The labor parties, on the other hand, deserve praise for the consistent attitude which they held throughout the session." *Osaka Mainichi*, May 7, 1928, p. 2. The quotations are taken from the *Japan Weekly Chronicle*, May 17, 1928, p. 616.

election. Liberalism of the Edmund Burke school looks upon the representative as the free delegate of his constituency, at liberty to follow his best judgment as to the interests of the people. On the other hand, the growth of parties in all countries has tended to make representatives submissive to party control, whether it be exercised by a parliamentary party, a national organization, or a local committee. The control of the vote of a representative by a labor union or a party controlled by labor unions is a more advanced step—a step perhaps in the direction of guild socialism, or at least functional representation.

In Japan, the labor parties from the outset assumed the right to control their representatives in the Diet. In each party they are strictly under the supervision and control of the central executive committee. In other words, the workingmen, having sent their candidates to the Diet, intend to hold them strictly to the class struggle. Immediately after the general election the executive committees of the parties issued instructions for the conduct of their parliamentary members in the 55th session of the Diet.⁶¹ All of these instructions called for the creation of a proletarian bloc. The Shakai Minshūto, as we have already seen, went further and invited the parties to form a joint committee. The invitation was accepted and the central executive committees adopted the following arrangement for a joint committee: (1) the proletarian parties should coöperate in the Diet and form a *musanto giindan*, or proletarian bloc; (2) the bloc should be controlled by a joint committee composed of three delegates for each party having a member in the Diet, as well as the parliamentary members themselves; (3) decisions of the joint committee were to be taken, not by majority vote, but by deliberation and general agreement; and (4) any proletarian party recognized by the joint committee might send representatives to the committee to express its views.⁶²

⁶¹ For the instructions of the Shakai Minshūto, see the *Tokyo Asahi*, April 25, 1928, p. 2; April 26, 1928, p. 1; April 27, 1928, p. 2; March 6, 1928, p. 2. For those of the Rodo Nominto and the Nippon Ronoto, see the *Tokyo Asahi*, March 2 and 3, 1928, p. 2.

⁶² *Tokyo Asahi*, March 10, 1928, p. 2.

Before the 55th session of the Diet opened, the position of the Rodo Nominto on the joint committee was rendered anomalous by the government's arbitrary dissolution of that party. The Nippon Ronoto and Minkento proposed that the committee file a vigorous protest with the home ministry. But the Shakai Minshūto demurred, holding that although the Rodo Nominto deserved sympathy from the standpoint of social democracy, nevertheless the views of the party had been defiant of law. The Shakai Minshūto also questioned the futile relations of the representatives of the defunct party with the joint committee.⁶³ In the end, the experiment of building up a fighting front by means of a joint committee did not give satisfaction, and the scheme was abandoned before the 56th session of the Diet.⁶⁴ The central executive committees still issue instructions to their parliamentary members, who, in turn, maintain the proletarian bloc by means of their own conferences in the Diet.⁶⁵ Parliamentary members are treated as agents of the party; and thus the central committees direct the proletarian bloc.

VIII. FEDERATION OF PARTIES

Will the rigid control over parliamentary members by party organs tend to drive liberals away? At present, the answer undoubtedly must be in the affirmative. There are independents in the Diet who will not brook such control. In the meantime, Japan lacks a great liberal party. For years, Ozaki and Count Goto have eloquently proclaimed the need for one, but without success in achieving its formation. Tsurumi has attempted to develop such a party with his small group. But he has made little headway. It is a question whether the Shakai Minshūto, with its emphasis on the class struggle, will be able to fill the

⁶³ *Tokyo Asahi*, April 12 and 13, 1928, p. 2; *Japan Weekly Chronicle*, April 19, 1928, p. 469.

⁶⁴ In December, 1928, the central committee of the Shakai Minshūto voted: "Since the joint parliamentary committee proved defective in the last session of the Diet, and since the proletarian bloc offers sufficient means of coöperation, there is no need for the reestablishment of the joint committee." *Tokyo Asahi*, Dec. 9, 1928, p. 2.

⁶⁵ *Yorozu Choho*, Jan. 23, 1929, p. 1, and *Tokyo Nichi-nichi*, Feb. 8, 1929, p. 2. Cf. Miyoga-Fusakichi, *Nippon Seito no Gensei*, or Contemporary Japanese Parties (Tokyo, 1929), p. 163.

gap. The leaders, it is true, hope to draw into the party the ever-increasing number of Japanese liberals. It is partly for this reason that such intellectuals as Abe and Yoshino have taken their strong position against the communistic elements in the proletarian parties. Party strategy, if nothing else, dictates this attitude.⁶⁶

The Rodo Nominto has been dissolved, but it is feared that the ex-members, drifting to the other parties, may augment left movements in these parties. Probably no country, not even America, is more obsessed with Bolshephobia than Japan. "Dangerous thoughts" are still anathema. Immediately after the election of 1928 the Tanaka government spread a drag-net over Japan to apprehend all communists. Arrests began at midnight on March 15, complete secrecy was enforced on the newspapers, and it was not until April 10 that news of the raid was allowed to be published. In a statement then given to the press, the minister of justice claimed to have proof that seventeen leaders of the Nippon Rodo Kumiai Hyogikai, or Japanese Council of Trade Unions, had founded the Nippon Kyosanto, or Japanese Communist party, as a branch of the Third International, and that members of the party had gone to Russia to receive the assent of the Moscow office.⁶⁷ A gigantic plot existed to make each factory a branch of the party. It had already covered Tokyo, Osaka, and all large cities, as well as most of the provinces. While the party was secret, it boasted control of the Rodo Nominto and its two members in the Diet, as well as the Hyogikai, the Musan Seinen Domei, or Proletarian Young Men's Union, and the Gakusei Shakai Kagaku Renmei, or Students' Social Science Federation.

On April 10, the Tanaka government used its authority under the peace police law to dissolve the alleged subsidiaries of the Communist party. In the dissolution order was included the

⁶⁶ In this connection, compare Takahashi-Kamikichi, *Sayoku Undo no Riron-teki Hokaï*, or Inevitable Disintegration of the Left Movement (Tokyo, 1928). The author argues that further communist agitation will lead Japan into a reactionary dictatorship of the Fascist type.

⁶⁷ *Tokyo Asahi*, April 10, 1928, p. 2.

Rodo Nominto, although the ministry of justice lacked sufficient evidence to implicate Oyama in a communistic conspiracy. After the ceremony of dissolving the party had occurred in Tokyo, Oyama attempted to take over the old branches for the party under a new name. But the meetings of the preparatory committee were dispersed by the police. Defeated by government vigilance, the leaders of the Rodo Nominto postponed reorganization until the Seiyukai should be in a better humor. But reaction has been on the increase. In June, the Tanaka cabinet secured the assent of the privy council to an emergency imperial ordinance increasing the penalties of the peace preservation act. Agitation for communism has been made punishable with death. In the summer of 1928 the moderates in the defunct party definitely broke with the radicals and succeeded in forming a new party under the name of Musan Taishuto, or Proletarian Peoples' party.⁶⁸

The misfortunes of the left wing continued. In December, after elaborate plans were formed for the resuscitation of the party under a new name and with new branches, the cabinet ordered the dissolution of even the *Shinto Jumbikai*, or preparatory committee.⁶⁹ Since that time the radical group has received another set-back. In January, 1929, Mizutani-Chozaburo, who was elected to the Diet on the Rodo Nominto ticket, issued a statement declaring that his former associates were too communistic for him. A few days later, in Kyoto, he formed a new party with a platform denouncing communism and calling for parliamentary coöperation.⁷⁰ Finally, the deplorable assassination of Yamamoto has left the dissolved Rodo Nominto without parliamentary representation.⁷¹ The leaders of the

⁶⁸ *Tokyo Asahi*, July 15 and 22, 1928, p. 2; *Japan Weekly Chronicle*, July-Aug., 1928, pp. 81, 118, 155.

⁶⁹ *Tokyo Asahi*, Dec. 22, 23, and 25, 1928, p. 1. Cf. *Japan Weekly Chronicle*, Jan. 3, 1929, p. 18.

⁷⁰ The party has the name Rono Taishuto, or Labor Farmer Peoples' party. Cf. *Tokyo Asahi*, Jan. 9, 1929, p. 3; Jan. 22, 1929, p. 2; Mizutani-Chozaburo, "The Formation of the Rono Taishuto," *Kaizo*, March, 1929, pp. 43-46.

⁷¹ Yamamoto was stabbed to death by a ruffian of the reactionary Seigi-dan, or Association of Justice, on the ground that he had been guilty of a *fuhei jiken*,

defunct Rodo Nominto are now in the position of politicians without a party. At the time of dissolution they had a compact organization of 131 branches with 90,000 members. Whether the dissolution order of the Tanaka cabinet has been able to stamp out this organization, or whether an invisible structure still exists, cannot be confidently stated.⁷²

The demoralization of the radical wing of labor has been further increased by the consolidation of nearly all of the center groups into an ambitious party under the name of Nippon Taishuto, or Japanese People's party.⁷³ This amalgamation includes the extreme right wing—the Nippon Nominto, or Japanese Farmers' party—with the Nippon Ronoto, the Musan Taishuto, and several local parties. The platform of the new party pledges a continuance of the class struggle, but also offers a list of reforms which are to be obtained by legal means. While the latter provision was intended as a negation of communism, the Shakai Minshūto declined the invitation to join forces on the ground that the new party will be a refuge for communists.

Some labor leaders hold that the Nippon Taishuto will prove to be a force antagonistic to the Shakai Minshūto.⁷⁴ Others hold that it is a step toward the unification of all proletarian parties.⁷⁵ Yoshino, the philosopher-critic of the Shakai Minshūto, maintains that the elements of disunion in the Nippon Taishuto are rife. In a brilliant series of essays he reiterates his

or *lèse majesté*, at the opening of the 56th session of the Diet. *Jiji Shimpō*, March 6, 1929, p. 1.

⁷² The vigor of the organization can be measured by the fact that more than three hundred delegates from all parts of the country attended the meeting of the preparatory committee in Tokyo on Dec. 22–24. *Tokyo Asahi*, Dec. 25, 1928, p. 1.

⁷³ For an account of the organization and text of the platform, see the *Tokyo Asahi*, Dec. 14, 1928, p. 2; Dec. 18, 1928, p. 3. The local parties include the Kyushu Minshūto (Kyushu Democratic party), and Kyushu Minkento (Kyushu Peoples' Constitutional party).

⁷⁴ Oyama-Ikuo, "A Bubble on the Fighting Front," and Akamatsu-Katsumaro, "A Proletarian Party Formed by a Casual Meeting of Leading Spirits," *Chuo Koron*, Feb., 1929, pp. 33–41.

⁷⁵ Aso-Hisashi, "The Basis for Unification of the Proletarian Parties," *ibid.*, Oct., 1928, pp. 75–79.

theme that the united fighting front of the parties should start in the Diet and not in an artificial super-organization outside of Parliament.⁷⁶ Among the many obstacles in the way of an organization of all the parties he sees the following: (1) the leaders lack training in coöperation, a trait characteristic of most Japanese politicians, (2) the parties are too much concerned with doctrine, (3) attempts by a central organization to control the opinions of the various component elements is doomed to failure, at least in the near future, finally, (4) the spirit of communism, particularly the reliance upon unparliamentary methods, will demand attention in any unification of parties and lead to friction and inefficiency. In other words, Yoshino holds that the future of the proletarian parties lies in the ability of the leaders to use the existing parties in the maintenance of the proletarian bloc in the Diet.

The proletarian parties are not limiting their activities to the national Diet. Local government offers a wide field for expansion. In the prefectural elections in October, 1927, the labor parties won 28 seats in a total of 1,485. This beginning was about equal to the proletarian accomplishment in the general election. A better showing was made in the recent election of the Tokyo council following its dissolution because of financial scandals. In this election the Shakai Minshūto captured five seats and the Nippon Taishuto one seat, out of a total of eighty-four.⁷⁷

Despite the recent embarrassment caused by the communists, the fundamental problem confronting the new parties appears to involve the difference between labor unions and labor parties. The former movement aims to organize the workingman for the purpose of the collective bargain. The latter aims to secure an adequate voice for the proletariat in the legislative halls of the nation. Both movements are phases of the class struggle,

⁷⁶ Compare his "Observations on Contemporary Politics," *ibid.*, Feb., 1929, pp. 57-90, and "The Unification of the Proletarian Parties," *ibid.*, Oct., 1928, pp. 49-53.

⁷⁷ Sakai-Toshihiko, on the Nippon Taishuto ticket, won the highest vote of all candidates. *Nichi Bei* (San Francisco), March 19, 1929, p. 1.

but distinct phases. The present trend in the labor union movement has been, not toward an all-Japan federation, but rather in the direction of federations of the right and left. Hence, until a greater degree of unity appears in the economic organization of labor, political cohesion cannot be assured. The question of political unity is further complicated by the inevitable rivalry between the city worker and the farmer. The proletariat, desiring cheap rice, distrusts the farmer—whether land-owner or tenant—whose economic interest demands a high price for food products. Perhaps, for this reason, any union between the agrarian and labor movements will always tend to be unstable. The labor and farmer leaders have made slow progress in building up the meagre organizations that now exist. It would be an unusual phenomenon if in the near future political unity should be achieved among the various proletarian groups. Meanwhile, however, the labor parties are moving forward in their separate channels.

AMERICAN GOVERNMENT AND POLITICS

Second Session of the Seventieth Congress (December 3, 1928, to March 4, 1929).¹ "I have stated universally to various callers," wrote the President-elect to the President on January 28, 1929, "that it would be improper for me to express any views on current matters of the administration." It is aside from the point to question the complete consistency of Mr. Hoover's added remark (the subject being the cruiser construction bill): "As you know, I warmly support your own views, and you may so inform others if you wish to do so." The truth is that the President-elect would have set the tone of the short session if he had merely failed to state that there would be no special session. As soon as his willingness to call Congress back in April was known,² most of the steam escaped and pressures in connection with farm relief which might have involved the whole program were forestalled. Under these relaxing circumstances, the cynosure of the session came to be the ironical juxtaposition of the left-over cruiser bill and the multilateral peace treaty in the Senate. Meanwhile the momentum of the inherently decentralized congressional system carried it past the dead-points of the interregnum and produced interesting, and even noteworthy, bits of domestic legislation.

Membership. In the House, the replacements incidental to deaths and resignations had involved no party shifts. When the session opened, the Republicans numbered 235; the Democrats, 193; Farmer

¹ For a note on the first session, see this *Review*, vol. 22, pp. 650-683 (August, 1928). For notes on the 69th Congress, see vol. 20, p. 604, and vol. 21, p. 297. For earlier notes, prepared by Lindsay Rogers, see vol. 13, p. 251; 14, pp. 74, 659; 15, p. 366; 16, p. 41; 18, p. 79; 19, p. 761.

² The House committee on ways and means, having organized in subcommittees on December 6, held hearings on general tariff revision between January 7 and February 25. This committee and the committees on agriculture of both houses were authorized to act between sessions. Hearings on farm relief began in the Senate on March 25 and in the House on March 27. The Senate meanwhile had met in a brief special session on March 5 to receive and confirm cabinet appointments. It referred the question of the status of Secretary Mellon (whose name President Hoover did not deem it necessary to submit) to its committee on judiciary.

Labor members, 2; Socialists, 1—not counting four vacancies.³ In the Senate the Republicans had edged still further away from the perilously close division of forces which they had faced at the outset of the Congress. With Otis F. Glenn in the Illinois seat denied to Smith, and with Burton of Ohio in place of Locher, they counted 49 members, even without Vare, against 45 Democrats and the single Farmer Laborite. They could look forward to turning room in the 71st Congress, with the prospect of 55 Republicans (56, if Vare is seated), 39 Democrats, and one Farmer Labor member.

The case of William S. Vare dragged through the session, culminating in a report of nearly one hundred pages on February 22, 1929, from the Special Committee Investigating Expenditures (Senate Report No. 1858). This document recounts the obstacles met by the committee, including the recurrent illness of Mr. Vare himself. Stricken with acute indigestion in May, when his appearance before the committee was postponed, he attended the Kansas City convention against the advice of his physician, and on November 28 wrote to the committee (again from Atlantic City): "The trip, instead of helping me, as I had hoped, injuriously affected my health until, on August 1, I suffered a stroke, paralyzing my left side, leg, and arm."⁴ The report concludes: "From the foregoing facts and conclusions, including those previously reported, it is the opinion of the committee that William S. Vare is not entitled to a seat in the United States Senate." On February 26, Senator Norris announced that he would not press for action in the 70th Congress on the resolution of exclusion. Instead, a resolution (S. Res. 341) was adopted extending the life and powers of the special investigating committee, on which Robinson of Arkansas has succeeded Reed of Missouri as chairman. Delay thus brings the question of seating Vare before a Senate in which the Republicans have a more comfortable majority.⁵

³ As a result of the 1928 elections, the new division of the House for the 71st Congress was: Republicans, 268; Democrats, 166; Farmer Labor, 1.

⁴ In its final report the committee says: "The examination of Dr. Kirby developed the fact that, within a few days after the postponement secured on May 18, 1928, and from that time until the first day of August, 1928, the said William S. Vare was able to have consulted with attorneys, to have appeared before the committee, and to have made such presentation of his case as was necessary" (S. Report No. 1858, p. 14).

⁵ Meanwhile the sub-committee (headed by Senator Waterman of Colorado) of the regular committee on privileges and elections has investigated the contest between Vare and William B. Wilson, the Democratic candidate in the

In the House, victory perched on the Philadelphia standard when, on January 8, the favorable majority report of the elections committee (H. Report. No. 975) on the seating of James M. Beck was accepted, after some debate involving the construction of the phrase, "inhabitant of that state in which he shall be chosen." Two of the three Democratic members of the committee tendered a minority report. Of the 247 who supported Mr. Beck's claim to a seat on January 8, 68 were Democrats; 78 only (70 Democrats, 7 Republicans, and one Farmer Labor) were opposed.

Organization. The party instrumentalities erected in the first session were modified only slightly.⁶ The death on November 19, 1928, of the former Democratic whip, William A. Oldfield, led to the choice in his place of John C. Box of Texas, a member of the House since 1918.

Procedure. In yielding the gavel on March 4, the former Vice-President referred to the "collective error" of the Senate: "Alone of all the deliberative bodies of the world, the Senate of the United States, under its rules, has parted with the power to allot its time to the consideration

1926 senatorial election, thus far without result. On the legal side, involving the Senate's power, interest attaches to the case of Barry, Sergeant-at-Arms, et al., v. United States, ex rel. Cunningham, argued in the Supreme Court on April 23, 1929 (No. 647). Expenditures in the New Jersey Republican senatorial primary of 1928 were investigated by the special committee (acting through a sub-committee headed by Senator McNary), which on February 22 (S. Report 1861) said: "There was no evidence of any character produced which would indicate that any of the candidates for United States senator expended more than the statutory allowance."

⁶ The preliminary caucuses to organize the 71st Congress were held before the adjournment. On March 2, the Republican caucus in the House renominated Speaker Longworth and reelected John Q. Tilson as floor leader. The Republican committee on committees (consisting of members chosen by the Republican state delegations) organized on March 5, 1929, and, among other acts, chose the steering committee and determined the Republican assignments to ways and means (giving a vacancy to J. A. Frear, of Wisconsin, a LaFollette supporter, who was formerly on the committee), to agriculture, and to rules. At the Democratic caucus on March 1, John N. Garner of Texas (ranking minority member on ways and means, who has been in the House for thirteen continuous terms, being exceeded on his side in length of service only by Pou of North Carolina) was named floor leader in place of Finis J. Garrett, who was defeated for the Senate in Tennessee in 1928. In the Senate, the Republican caucus on March 5, 1929, chose Watson of Indiana as leader, Jones of Washington as assistant leader (so-called), and Fess of Ohio as whip. The Democratic caucus on the same day made no notable change, except that Sheppard of Texas replaced Gerry of Rhode Island, defeated for reelection in 1928, as whip.

of the subjects before it in accordance with their relative importance. This defect in procedure is fundamental. I take back nothing." Congestion there was, in the manner of all short sessions, but no single spectacular filibuster existed to sharpen Mr. Dawes' point as was the case at the close of the preceding Congress.

A single cloture motion was filed but not brought to a vote. On March 1, in connection with the bill to prolong the full powers of the Radio Commission (H. R. 15430, below p. 377), Senator Watson brought out a petition signed by seventeen members. "I am presenting it," he said, "with the distinct understanding that if a majority of the Senate which I know favors this bill will stay with me on the proposition, we will exhaust the Senator from New York personally, if need be, and if that cannot be done, then we will apply the cloture rule." Whether exhausted or not, Dr. Copeland did not drive the Senate to seek relief in surgery.

The Senate steering committee (more properly, the committee on order of business of the Republican conference) functioned in its routine way in receiving applications from individual senators regarding bills already on the calendar and in publishing lists of recommended measures from time to time, with notice that the committee "suggests that the following bills be made the unfinished business of the Senate, in the order listed, after the disposal of the present unfinished business." How modest was its rôle, even as moderator, can be judged from the fact that the four circular letters issued for it by Senator Sackett of Kentucky on December 14, January 25, February 19, and February 28, specified ten bills; and of these, six became law, one was defeated by the Senate, and three did not reach a vote there.⁷

Procedure in the House followed its usual course.⁸ Fifteen special rules for the consideration of bills were reported and adopted.⁹ These

⁷ The items which became law were as follows: H. R. 11526, cruiser construction; S. 2901, prohibition penalties; S. J. Res. 117, Nicaraguan Canal survey; H. R. 8298, produce market in District of Columbia; S. 4937, continuing powers of Radio Commission; and H. R. 13929, enlarging the Capitol grounds. S. 1093, to prevent the sale of cotton and grain in future markets, was defeated in the Senate on February 14. The recommended bills which were not voted on were: H. R. 11725, for reapportionment; H. R. 393, for taking the census; and S. J. Res. 208, to authorize a street-railway merger in the District of Columbia.

⁸ The "discharge rule" was not operated. In the lifetime of the 70th Congress two petitions for entry upon the calendar of "motions to instruct committees" were filed but did not receive sufficient signatures.

⁹ The matters given consideration under special rules were the Greek debt, the Austrian loan, four bills for additional judges, reapportionment, increased

covered much of the important legislation of the session, apart from privileged appropriation bills and measures already sent to the Senate. Dependence on the device, having grown relatively in recent years, shows no sign of lessening.

So far as concerns changes in the rules themselves, it is of interest from the standpoint of the technique of law-making to note the change of House Rule XIII on January 28 (H. Res. 278) by the addition of a requirement that bills be printed in ways (purposefully left flexible) which will show comparatively the matter proposed to be repealed or amended. Unfortunately, this excellent step to universalize what has been the practice of some committees does not entail recognition of the new United States code in all permanent legislation. In the Senate it was proposed (S. Res. 309) that the rules should be changed to provide for the consideration of nominations in open session unless otherwise ordered by a two-thirds vote in particular cases.¹⁰ This suggestion was debated (especially on January 30 and February 2), but did not reach a vote.

Recalcitration and reapportionment. The threat of filibustering led to the collapse in the Senate of the attempt to pass the measure for automatic reapportionment of the House on the basis of its present size, following the 1930 and subsequent censuses. Having been recommittees in the first session, the bill (H. R. 11725) passed the House on January 11 with the aid of a special rule. The alignment was understandable. Seven of the eight members of the committee who signed an adverse minority report came from states that faced a reduction of representation. The final test was on the motion to recommit, which failed by a vote of 134 (41 Republicans, 93 Democrats) to 227 (159 Republicans, 65 Democrats, 2 Farmer Labor, 1 Socialist). The seventeen states¹¹ likely to incur losses cast 100 votes for the motion to

aid for vocational education, migratory bird refuges, storm relief in the South-east, four bills regarding aliens (including the postponement of the national origins clause, which failed to pass the Senate), the prolongation of the powers of the Radio Commission, load lines for vessels, civil service retirement (a bill later killed by pocket veto), educational war-orders, prohibition penalties, and the Nicaraguan Canal survey. In addition, two special rules for consideration, though reported, were not brought to a vote.

¹⁰ In the second session of the 70th Congress the Senate received 4,209 nominations from the President and confirmed 4,043. None were rejected, but 12 were withdrawn and 154 remained unconfirmed at the end of the session.

¹¹ The seventeen states and their prospective losses are: Ala., 1; Ind., 2; Iowa, 2; Kan., 1; Ky., 2; La., 1; Me., 1; Mass., 1; Miss., 2; Mo., 4; Nebr., 1; N. Y., 2; N. D., 1; Pa., 1; Tenn., 1; Vt., 1; Va., 1.

recommit; 81 against it. The eleven states¹² likely to gain gave only 6 votes to the motion and 88 against it. In the upper chamber Senator Vandenberg of Michigan secured a favorable committee report almost immediately, prevailed on the steering committee to list the bill as a preferred measure, and on January 24 won his motion to take it up on the floor by 53 to 24; but in the end he failed. Basing his attack immediately on the proposed use of the system of computation by "major fractions,"¹³ instead of the rival method of "equal proportions," Senator Black of Alabama exclaimed on February 25: "I will not vote for a measure which is destined in the long run to change prematurely the great balance of legislative power in this nation from the rural districts into the great metropolitan areas." Mr. Vandenberg threw up his hands. "Mr. President," he said, "the last thing in the world I would be willing to do would be to take the responsibility upon myself for needlessly defeating these great supply bills. . . . But apparently the Senator from Mississippi (Mr. Harrison) and those who agree with him in their opposition to constitutional reapportionment are quite willing to take the responsibility. . . ." In complaining of the rules of the Senate, Mr. Vandenberg did well to emphasize the scheme of alternating short sessions: "There is something wrong with such rules, and there is particularly something wrong with these short sessions which permit such a checkmate upon government functions."¹⁴

Peace and War. Having disposed of the Boulder Canyon project bill, which was the unfinished business at the opening of the session, the Senate turned after the Christmas recess to the cruiser bill¹⁵ and

¹² The estimated gains would be: Ariz., 1; Cal., 6; Conn., 1; Fla., 1; Mich., 4; N. J., 2; N. C., 1; Ohio, 3; Tex., 2; Okla., 1; Wash., 1. Twenty states would not be affected.

¹³ Senator Vandenberg wrote on March 2, 1929: "Reapportionment has again been defeated in the Senate The handiest 'excuse' was the academic quarrel over a mathematical method for handling remainders. Thus the tail has again wagged the dog. Based on the 1920 census, the difference between 'major fractions' and 'equal proportions' involves just three seats out of 435" (Appendix to the *Record* of March 2).

¹⁴ Senator Vandenberg added that, in recommitting the bill by agreement, he did so with the "promise that reapportionment will reappear in the next Congress in the special session and stay before the bar of the United States Senate until it is acted upon." Early action will be necessary, at least on the bill to provide for the fifteenth census. H. R. 393, for this purpose, passed the House on May 21, 1928, but sank with reapportionment in the Senate.

¹⁵ H. R. 11526, passed by the House on March 17, 1928, by a vote of 287 to 58, after the Administration's naval construction program had been trimmed in committee from one of \$725,000,000 to about \$274,000,000.

the peace treaty.¹⁶ The very fact that many persons deemed them inconsistent made it natural to couple them in the practical process of legislative compromise. On December 20 both were made unfinished business for January 3, but when that time came the treaty was allowed to go ahead. Reed of Missouri was especially vigorous in asserting his doubts. Pressed by him and others, the committee on foreign affairs made a partial concession to the spirit of reservation by filing a brief explanation of the treaty, concluding with the statement: "This report is made solely for the purpose of putting upon record what your committee understands to be the true interpretation of the treaty and not in any sense with the design of modifying or changing the treaty in any way or effectuating a reservation or reservations to the same."¹⁷ On January 15 the pact was ratified by a vote of 85 (43 Republicans, 41 Democrats, 1 Farmer Labor) to one.¹⁸ Two days later it was signed by the President.¹⁹

Action on the cruiser bill was sought immediately after the disposal of the peace treaty. Senator Hale, chairman of the committee on naval affairs, developed little driving force. He became almost plaintive on January 24: "I have been trying to get action on the bill almost every day that the Senate has been in session. Hitherto I have not been successful." Considerable repetitious debate took place before the bill was passed on February 5 by a vote of 68 (34 Republicans, 34 Democrats) to 12 (7 Republicans, 4 Democrats, 1 Farmer Labor). Partisanship on party lines was not evident either in the final roll call

¹⁶ The Kellogg (or Paris) Pact, so-called, was tendered to the Senate in a special message on December 4. Secretary Kellogg appeared before the committee on foreign affairs on December 7 and 11; a transcript of his comment was made public on December 28. The vote in the committee was: for the treaty, 14 (7 Republicans, 6 Democrats, 1 Farmer Labor); opposed, 2 (Reed and Bayard, both Democrats); not voting, 2 (Moses and McLean). The treaty was favorably reported on December 19 without explanation. The report was accompanied (with implied disapproval) by a proposed resolution of reservation in four parts, suggested by Moses.

¹⁷ Executive Report No. 1, read just before the final vote was taken and printed in the *Record* of January 15.

¹⁸ Blaine of Wisconsin, Republican, who had lost in a *viva voce* vote in his attempt to attach a proviso (in which he had in mind some British official statements) that ratification by the United States did not imply the admission of implications contained in diplomatic notes circulated regarding the treaty.

¹⁹ In all, thirty-two treaties were approved by the Senate in the second session of the 70th Congress—the highest number (it was said) in any session since 1914. They are listed in the *United States Daily* of March 6, 1929.

or in the treatment of proposed amendments. One of these concerned the requirement that five cruisers must be laid down each year for three years. In his message the President had said: "The bill before the Senate, with the elimination of the time clause, should be passed." When an attempt was made unsuccessfully on February 4 to strike out the time clause, the motion was offered by Senator Harrison of Mississippi, Democrat; it was supported by 16 Republicans, 11 Democrats, and one Farmer Labor member, whereas 28 Democrats and 26 Republicans stood for the time limit. Senator Norris' proposal to cut the number of authorized cruisers from fifteen to nine lost by a vote of 12 (7 Republicans, 4 Democrats, 1 Farmer Labor) to 69 (32 Republicans, 37 Democrats). Another Norris proposal to request that the President seek an agreement with Great Britain regarding cruiser construction received nine votes (6 Republicans, 2 Democrats, 1 Farmer Labor) to 70. The phrases in the final act (below, p. 374) in which Congress expresses its hope for a treaty regulating the laws of war at sea were embodied in the substitute brought forward by Reed of Missouri for Borah's proposed amendment; it was adopted by a vote of 81 to one.²⁰

Echoes of the criticism of Latin American policy, especially in Nicaragua, were heard in connection with the naval appropriation bill (H. R. 16714), although the bill itself later passed the Senate without a roll call. On February 22, while in the committee of the whole, the Senate adopted an amendment offered by Dill of Washington, Democrat, stipulating that none of the funds should be used "to maintain marines in Nicaragua or to transport marines to and from Nicaragua, except in cases of emergency arising hereafter endangering life or property, or both, of American citizens." The division on this occasion was 38 (10 Republicans, 28 Democrats) to 30 (24 Republicans, 6 Democrats). When the bill came before the Senate on the following day, however, the conservatives rallied and struck out the proviso by a vote of 48 (34 Republicans, 14 Democrats) to 32 (8 Republicans, 24 Democrats).

Reverberations from the Caribbean were heard also in the consideration of Senator Edge's proposal for a survey of the need for and possibility of enlarged interoceanic canal facilities.²¹ "The truth of

²⁰ Space forbids comment on the interesting, if irregular, attempt of Mr. Britten, chairman of the House committee on naval affairs, to enter into direct communication with the British prime minister regarding a joint meeting of his committee and a select committee of the House of Commons.

²¹ S. J. Res. 117, approved March 2, Public Resolution No. 99, authorized \$150,000 to enable the War Department to investigate the practicability and

the matter," charged Senator Dill on February 23, "is that the real purpose back of all this is to give an excuse for keeping the marines in Nicaragua." The joint resolution itself passed the Senate without a record vote. When, however, the second deficiency bill (carrying an appropriation for the survey) came before the Senate, Mr. Dill and his associates managed to prolong a night session into the early morning of February 28, only to lose later in the day by a vote of 54 (29 Republicans, 25 Democrats) to 19 (11 Republicans, 8 Democrats).

The Legislative Product. The session enacted 729 public and private laws and resolutions. These, added to the output of 993 in the first session, brought the total of the 70th Congress to 1,722,²² compared with 1,423, 996, 931, 594, and 508 in preceding Congresses, from the 69th to the 65th, respectively.

Enactments of general interest include the following:

(1) The authorization of a high dam and related developments in the lower Colorado River was one of the earliest and most notable achievements of the session. The measure (H. R. 5773, approved December 21, Public No. 642) bears the short title "Boulder Canyon Project Act," but the choice between Boulder Canyon and Black Canyon (sometimes called the Lower Boulder Canyon site, and preferred by the special board of engineers and geologists which reported on December 3, 1928) is left to the Secretary of the Interior. The delegation of wide discretion to this official characterizes the act at every point. Two major undertakings are authorized: on the one hand, "a dam and incidental works in the main stream of the Colorado River at Black Canyon or Boulder Canyon adequate to create a storage reservoir of a capacity of not less than twenty million acre-feet of water;" on the other hand, "a main canal . . . located entirely within the United States connecting the Laguna Dam, or other suitable diversion dam . . . with the Imperial and Coachella Valleys." The adoption of the final provisions was marked by a number of compromises. When the session opened, Senator Johnson's bill (S. 728) was

cost "of constructing and maintaining (1) . . . additional locks and other facilities at the Panama Canal . . . and (2) any other route for a ship canal between the Atlantic and Pacific Oceans." The investigation of the possibility of a canal across Nicaragua is specifically mentioned. This measure passed the House on March 1 by a vote of 185 to 56.

²² Of these, 577 were private. Nine omnibus pension bills were enacted, incorporating 7,620 private bills.

the unfinished business of the Senate. The slightly different Swing bill²³ was first substituted for S. 728 and then immediately amended by inserting the provisions of the Senate bill. An important compromise was struck by the adoption of an amendment providing for the division of the 7,500,000 acre-feet annually apportioned to the lower basin states by the Colorado River Compact; among other stipulations on this point, it is provided that Arizona shall be entitled to the exclusive use of 2,800,000 acre-feet and Nevada to 300,000, leaving 4,400,000 to California. The amendment was carried by a vote of 48 (13 Republicans, 35 Democrats) to 29 (25 Republicans, 3 Democrats, 1 Farmer Labor). Arizona failed, however, in the attempt to require that the Colorado River Compact²⁴ (approval of which is made a prerequisite of the operation of the whole act) must be ratified by all seven states. An amendment to this effect lost by a vote of 17 (1 Republican, 16 Democrats) to 53 (34 Republicans, 19 Democrats). In the act as adopted, the ratification of the Compact is made an absolute condition-antecedent, but (if the approval of seven states is not secured within six months) six states are sufficient.

From the standpoint of the issue of government operation, the act is a compromise. It states that "the title to said dam, reservoir, plant, and incidental works shall forever remain in the United States, and the United States shall, until otherwise provided by Congress, control, manage, and operate the same;" but it adds that "the Secretary of the Interior may, in his discretion, enter into contracts of lease of a unit or units of any government-built plant, with a right to generate electrical energy, or alternatively, to enter into contracts of lease for the use of water for the generation of electrical energy." This provision fell short of what Senator Johnson desired. On the other hand, Senator Reed of Pennsylvania failed in an attempt to insert a proviso declaring it to be "the policy of this act that the construction of any plant for the generation of electrical energy shall be undertaken by the United States only in the event that satisfactory contracts for the construction and operation of such a plant or plants cannot be made with states or governmental subdivisions of states or with private persons or corporations." The revealing roll call in which this proposal was rejected stood 24 (17 Republicans, 7 Democrats) to 53 (23 Republicans, 29

²³ H. R. 5773, which had passed the House on May 25, 1928, by a vote of 219 (105 Republicans, 111 Democrats, 2 Farmer Labor, 1 Socialist) to 137 (91 Republicans, 46 Democrats).

²⁴ Provisionally signed November 24, 1922.

Democrats, 1 Farmer Labor). The friends of direct governmental operation of power facilities can find comfort in the stipulation in the act "that preference to applicants for the use of water and appurtenant works and privileges necessary for the generation and distribution of hydro-electric energy, or for delivery at the switchboard of a hydro-electric plant, shall be given, first, to a state for the generation or purchase of electric energy for use in the state, and the states of Arizona, California, and Nevada shall be given equal opportunity as such applicants." On the financial side, appropriations not to exceed \$165,000,000 are authorized for construction, to be amortized in fifty years. Before proceeding with the construction of the dam, the Secretary of the Interior is directed to make provision for revenues by contract which will provide for the expenses of operation and for the fixed charges. Arizona and Nevada are each promised $18\frac{3}{4}$ per cent of any excess revenue. In these balanced terms, the Boulder Canyon Project Act passed the Senate on December 14 by 65 (32 Republicans, 32 Democrats, 1 Farmer Labor) to 11 (7 Republicans, 4 Democrats). On December 18 the House accepted the Senate draft by a vote of 166 (79 Republicans, 85 Democrats, 1 Farmer Labor, 1 Socialist) to 122 (79 Republicans, 43 Democrats). For the present, the letting of contracts waits upon the ratification of the Colorado River Compact. Appropriations by Congress, furthermore, will be necessary before actual construction is begun.

(2) The naval construction (cruiser) act (H. R. 11526, approved February 13, Public No. 726, above p. 370) has already been discussed from the procedural side, but for convenience its final terms are restated here. It authorizes the President "to undertake prior to July 1, 1931, the construction of fifteen light cruisers and one air-craft carrier." The cruisers must be laid down at the rate of five each year; the limit of cost is \$17,000,000 each. The aircraft carrier is to be begun before June 30, 1930; the cost is not to exceed \$19,000,000. Each alternate cruiser is to be constructed and equipped in the government yards and factories. A proviso is attached declaring that their construction "shall be subject to the limitations prescribed by the treaty limiting naval armament, ratified August 17, 1923, so long as such treaty shall remain effective;" and adding that "in the event of an international agreement, which the President is requested to encourage, for the further limitation of naval armament, to which the United States is signatory, the President is hereby authorized and empowered to suspend in whole or in part any of the naval construction authorized under

this act." Furthermore, it is said: "First, that the Congress favors a treaty, or treaties, with all the principal maritime nations regulating the conduct of belligerents and neutrals in war at sea, including the inviolability of private property thereon. Second, that such treaties be negotiated, if practically possible, prior to the meeting of the conference on the limitation of armaments in 1931."

(3) Constitutionally, as well as from the standpoint of labor legislation, there is interest in the enactment, after two decades of agitation,²⁵ of the Cooper-Hawes convict labor bill (H. R. 7729, approved January 19, Public No. 669, but not effective until five years after its approval). This brief measure provides: "that all goods, wares, and merchandise manufactured, produced, or mined, wholly or in part, by convicts or prisoners . . . transported into any state or territory of the United States and remaining therein for use, consumption, sale, or storage, shall upon arrival and delivery . . . be subject to the operation and effect of the laws of such state or territory to the same extent and in the same manner as though . . . manufactured, produced, or mined in such state or territory. . . ."

(4) Two measures affecting national penal institutions deserve notice. One of these (H. R. 13645, approved January 19, Public No. 672) authorizes the establishment of two narcotic farms (to be under the direction of the Public Health Service) "for the confinement and treatment of persons who have been or shall be convicted of offenses against the United States . . . and who are addicted to the use of habit-forming narcotic drugs, and for the confinement and treatment of addicts who voluntarily submit themselves for treatment." The relative importance of this measure is indicated by the fact that, of 6,949 inmates at Leavenworth, Atlanta, and McNeil's Island in 1925,

²⁵ The measure passed the House in the first session, May 15, 1928, by a vote of 303 to 39 (22 Republicans, 17 Democrats), amended to delay its operation three instead of two years. In the Senate, however, "for the fourth time since 1908" (protested Senator Hawes on May 17) its passage was "defeated by just a few men." In the second session, Senator Goff's motion to direct the committee on judiciary to inquire into its constitutionality was defeated on December 19, by a vote of 13 (10 Republicans, 3 Democrats) to 62; and (amended to stretch the postponement of its operation to 5 years) it was passed on the same day by 65 (29 Republicans, 35 Democrats, 1 Farmer Labor) to 11 (8 Republicans, 3 Democrats). State legislation in point is digested in the *Monthly Labor Review*, March, 1929, vol. 28, pp. 126-137. About a dozen states now have important restrictive legislation which will be released fully when the national act takes effect.

2,533 had been convicted under the Harrison Narcotic Act, and of those at the first two institutions, 1,304 were drug addicts.²⁶ A related act (H. R. 11285, approved February 26, Public No. 822) authorizes the Attorney-General to establish and operate prison camps, upon sites selected by himself and the Secretaries of Agriculture and the Interior, to which federal prisoners may be transferred "for employment upon road or trail building, the cost of which is borne exclusively by the United States."

(5) The Migratory Bird Conservation Act (S. 1271, approved February 18, Public No. 770) contemplates a system of inviolate sanctuaries for migratory birds covered by the treaty with Canada. The recommendations of the Secretary of Agriculture regarding their location and the acquisition of property (which always requires the consent of the state) are subject to a Migratory Bird Conservation Commission, comprising the Secretaries of Agriculture, Commerce, and Interior, two members of each house, and, *ex officio*, the chief game official of any state in which a sanctuary is proposed. The act authorizes appropriations which step up from \$75,000 for 1930 to \$1,000,000 for 1933 and for six years following, falling to \$200,000 annually after 1940.²⁷

(6) Federal aid in vocational education is enlarged by the authorization (S. 1731, approved February 5, Public No. 702) of an additional sum beginning at \$500,000 for the next fiscal year and mounting to \$2,500,000 annually, half of which will be allotted on the basis of farm population and half on the basis of rural population.

(7) The aftermath of hurricanes and floods was recognized in several acts. For Virginia, the Carolinas, Georgia, Florida, and Alabama, \$6,000,000 was authorized as loans to farmers and fruit growers (S. J. Res. 182, approved February 25, Public Resolution No. 92). For the four lower Mississippi Valley states, \$3,654,000 was appropriated to restore roads and bridges, with the proviso that these states make like sums available (item in the War Department appropriation act, H. R.

²⁶ Albert Langeluttig, *The Department of Justice of the United States* (1927), p. 195.

²⁷ The final votes in the Senate on April 18, 1928, and in the House on February 9, 1929, were unanimous. Two outstanding bones of contention had been dropped: (1) the proposal of a federal license for hunting migratory birds, as a means of financing the scheme; (2) the proposal to allow limited hunting in the refuges, in the discretion of the Department of Agriculture. On March 19, 1929, the Biological Survey indicated that sanctuaries were needed in at least 125 concentration areas.

15712, approved February 28, Public No. 843, following a precedent made last year in behalf of the New England states and Kentucky). For Porto Rico, \$8,150,000 was authorized for loans to agriculturists and for the repair of schools and roads (H. J. Res. 352, approved December 21, Public Resolution No. 74).

(8) Load lines for merchant vessels over 250 tons (except those in the Great Lakes) are to be established by regulations of the Secretary of Commerce under a statute (S. 1781, approved March 2, Public No. 934) which frees the United States from the embarrassment of being the only important maritime nation without such restrictions.

(9) For a second time the Radio Commission, instead of lapsing into the appellate rôle contemplated by the act of 1927, was continued with full powers, until December 31, 1929 (H. R. 15430, approved March 4, Public No. 1029, above p. 367). This legislation recognizes the crucial litigation now rapidly accumulating by making further provision for a legal staff.²⁸

(10) In fields of law touching the alien, there was considerable legislative activity,²⁹ but only measures of secondary importance passed both houses. Naturalization procedure is amended (H. R. 349, approved March 2, Public No. 962) by providing in part (as a method of relief from technical obstacles) that aliens admitted prior to June 3, 1921, and in residence since, who are of good moral character and not subject to deportation, "shall be deemed to have been lawfully admitted to the United States." Another minor change remedies technically erroneous renunciations of allegiance (H. R. 16440, approved March 4,

²⁸ Speaking on February 19, 1929, Senator Dill said: "Some of the cases now pending in the District Court of Appeals go to the very heart of the law. The most important probably is the case of the General Electric Company of Schenectady, station WGY" (Nos. 4870, 4871, 4880.)

²⁹ A phase of lively interest was the attempt again to suspend or repeal the national origins clause of the act of 1924. The House was willing. Meeting in an unwonted Sunday session on March 3, a resolution for postponement (H. J. Res. 402) was passed by a vote of 191 (144 Republicans, 45 Democrats, 2 Farmer Labor) to 152. In the Senate, however, the attempt encountered the stubborn defense of Senator Reed of Pennsylvania, the outstanding proponent of national origins in Congress. Having convened on March 3, the Senate almost immediately adopted a pious motion to adjourn, by a vote of 39 to 36, and the opportunity to suspend the national origins clause was lost so far as the short session was concerned. On March 22 President Hoover reluctantly proclaimed the new quotas, effective July 1 unless action is taken by the special session. A proposal (S. 1437) to apply the quota system to Mexico was favorably reported in the Senate on December 14.

Public No. 1011). Deportation procedure is altered at several points, generally in the direction of stringency, although not to the lengths proposed in the House bill (S. 5094, amended by borrowing provisions from H. R. 10078, approved March 4, Public No. 1018).

(11) Greece's indebtedness to the United States is settled in what is almost the last of the long series of debt-funding measures (H. R. 10760, approved February 14, Public No. 747).³⁰ In addition to funding what has been advanced by the United States (set down at \$18,127,922 including interest), a new loan of \$12,167,000 at four per cent is authorized "to assist in the completion of the work of the Greek Refuge Settlement Commission." Somewhat related was the indirect assistance to Austria provided in a resolution (H. J. Res. 340, approved February 4, Public Resolution No. 81) by which the Secretary of the Treasury is authorized to subordinate "the lien of the United States upon the assets and revenues of Austria pledged for the payment of the Austrian relief bonds held by the United States" to a new international reconstruction loan. Austria's indebtedness to the United States is funded at \$34,630,968.

(12) No major proposal touching administration even reached the floor.³¹ Important in its way, however, is the act (H. R. 5769, approved February 27, Public No. 833) enlarging the functions of the general supply committee. Hitherto confined to writing purchasing contracts without regard to definite amounts, it is now to have a revolving "general supply fund," storage facilities, and will itself purchase or procure and distribute supplies. On the structural side, a step is taken in the creation of a congressional joint commission on insular reorganization which is to report in December regarding the advisability of placing all matters pertaining to the insular possessions in one bureau

³⁰ The justification for the further loan was said to lie in the fact that the United States did not loan Greece its full proportion in the inter-allied loan. This feature of the bill, particularly, excited minority opposition in the committee and in the house. On December 10 the bill carried by what was nearly a party vote: 171 (157 Republicans, 13 Democrats, 1 Farmer Labor) to 155 (23 Republicans, 130 Democrats, 1 Farmer Labor, 1 Socialist). It was said in defense of the settlement that, expressed as a percentage of present cash value, it represents a settlement at 34½, compared with 26½ in the case of Italy.

³¹ Hearings were held by the committee on expenditures in the executive departments in January and February, 1929, on H. R. 16722, for the consolidation of activities affecting war veterans. Previously, in March and April, 1928, the same committee had held hearings on the Wyant bill, H. R. 8127, for the consolidation of construction and engineering functions.

or department (S. J. Res. 9, approved March 4, Public Resolution No. 108).

(13) Minor also are the recent changes in judicial organization.³² The title of the Court of Customs Appeals is changed to Court of Customs and Patent Appeals, to which are diverted (in view of the relative congestion of the latter tribunal) appeals from the commissioner of patents which formerly went to the Court of Appeals of the District of Columbia (H. R. 6687, approved March 2, Public No. 914). A new judicial circuit—the tenth—is created by the division of the former eighth circuit (H. R. 16658, approved February 28, Public No. 840).

(14) Prohibition claimed more than usual attention. Note is made elsewhere (p. 381) of the humor involved in the unsuccessful attempt to compel the Administration to take more money for enforcement. On the penal side, the successful measure which bears the name of Senator Jones (S. 2901, approved March 2, Public No. 899) saw the wets giving blows but yielding ground. This brief amendment to the National Prohibition Act states that the penalty imposed for each offense "shall be a fine not to exceed \$10,000 or imprisonment not to exceed five years, or both: *Provided*, That it is the intent of Congress that the court, in imposing sentence hereunder, should discriminate between casual or slight violations and habitual sales of intoxicating liquor, or attempts to commercialize violations of the law."³³

³² Students of administration will find interest in the bill (S. 5154) to create a "United States court of administrative justice," introduced by Senator Norris for educational purposes and explained by him in the *Record* of January 3. On a very different side of the judiciary, mention may be made of two investigations, to be made by subcommittees of the House committee on judiciary, looking toward possible impeachment of Judge F. A. Winslow of the southern district of New York (H. J. Res. 425, approved February 26, Public Resolution No. 93), and of Judge G. M. Moscovitz of the eastern district of New York (H. J. Res. 431, approved March 2, Public Resolution No. 102). After the resignation of Judge Winslow on April 1, the committee dropped action.

³³ This proviso (suggested by Senator Reed of Pennsylvania and accepted by Senator Jones) was adopted on February 19 by 58 (35 Republicans, 23 Democrats) to 25 (6 Republicans, 19 Democrats). The motion of Senator Bingham of Connecticut to remove the penalty from first offenses lost by the neatly balanced vote of 31 (16 Republicans, 15 Democrats) to 51 (24 Republicans, 27 Democrats). In final form the measure then passed by 65 (36 Republicans, 29 Democrats) to 18 (5 Republicans, 13 Democrats.) On February 28 the House approved it by 283 (161 Republicans, 120 Democrats, 2 Farmer Labor) to 90 (44 Republicans, 46 Democrats.)

The President and Legislation. In contrast with the sharp exchange of fire in the first session, no bills were returned with veto messages. Eleven measures, however, were extinguished by the pocket veto.³⁴

Meanwhile the question of the right of pocket veto when exercised between the long and short sessions of a Congress was advancing to a judicial determination. On March 11, 1929, the new attorney-general appeared personally before the Supreme Court to argue the case of *The Okanogan, Methow, San Poelis (San Poil), Nespelem, Colville, and Lake Indian Tribes or Bands of the State of Washington, petitioners, v. The United States* (No. 565), in which the power of pocket veto was involved in connection with a bill (S. 3185) passed in the first session of the 69th Congress.³⁵

The constitutional point gained immediate interest because it involved the fate of the Norris joint resolution in the first session (S. J. Res. 46) for government operation of Muscle Shoals. Senator Norris said on November 9, 1928: "It looks now that unless the Supreme Court holds that the Muscle Shoals bill passed at the last session of Congress is now a law, that great property developed at the expense of the American taxpayers cannot be saved for the people. We do not have the votes in Congress to pass a similar bill over the veto of the President, and it is well known that the next President would veto any bill that retained the ownership, control, and operation of Muscle Shoals in government hands." As a matter of fact, rugged reaction was at work even in the short session. On February 14—acting (with disputed legality)³⁶ without having been specifically called by its chairman, Mr. Morin—a quorum of the House committee on military affairs convened and drove through a favorable report of

³⁴ The most important of these were an amendment to the civil service retirement law (S. 1727); the self-styled federal tort claims act (H. R. 9285); a proposal permitting the United States to be made a party defendant in certain cases (H. R. 13981); and measures touching the life-saving service (H. R. 16656), and the Ouachita National Park (S. 675). The remaining six were private bills. In addition, three were vetoed because companion bills had already become law.

³⁵ See the printed brief for the government, prepared by W. D. Mitchell and R. P. Reeder, and a brief on the other side, prepared by Representative H. W. Sumner, as *amicus curiae*. Earlier, on December 22, 1928, President Coolidge transmitted to Congress a memorandum on the point. (H. Doc. 493)

³⁶ On February 16 (temporary paging 3741-7) the Speaker held this action proper, ruling "whenever the circumstances are such that members of the committee feel it necessary to procure legislation and they have a quorum present, that meeting is legal if it occurs in the committee room on the regular day."

the so-called Madden bill (H. R. 8305) for a lease to the American Cyanamid Company.

Appropriations. For the first time, the total of the appropriation acts exceeded the budget estimates.³⁷ The net excess was \$8,159,869. Reference to the accompanying table³⁸ will show that six of the eleven appropriation acts were under the estimates. The excess was partially due to an increase of \$3,912,085 for certain military functions in the War Department appropriation act. Most important of all was the swelling of the second deficiency act by \$11,065,455—of which \$7,400,000 was to modernize two battleships in accordance with an authorization secured without budget approval.

A bizarre deadlock in which budgetary relations were involved arose from the attempt to impose a large additional appropriation for prohibition enforcement. There was much criss-crossing of the motives of willful wets, wishful dries, and Democrats, wet or dry, who did not wish well for the Administration. It began as wet strategy, when on December 17 Bruce of Maryland attempted to raise the appropriation for prohibition enforcement carried by the Treasury-Post Office appropriation bill from \$13,500,000 to \$270,627,000. He came within three votes of overturning the committee's report, 35 (3 Republicans, 32 Democrats) to 38 (35 Republicans, 2 Democrats, 1 Farmer Labor). It was a game others could play and about which dries could be serious. When the first deficiency appropriation bill reached the Senate, an amendment offered by Harris of Georgia (which the Senate committee reduced from \$50,000,000 to \$24,000,000) was adopted on January 22 by 50 (14 Republicans, 36 Democrats, 1 Farmer Labor) to 27 (24 Republicans, 3 Democrats).³⁹ The Administration squirmed violently. The friendly House bundled the bill back into conference by a vote of 240 to 141. It seemed lost, and the more urgent items were loaded into the second deficiency appropriation bill. This, in turn, became the means for the attack. Representative Byrns, ranking minority

³⁷ The net reductions of the estimates by Congress by fiscal years since the establishment of the budget have been: 1923, \$312,361,792; 1924, \$10,741,504; 1925, \$9,024,637; 1926, \$12,596,495; 1927, \$6,716,064; 1928, \$7,752,939; 1929, \$9,331,779.

³⁸ P. 382. The information was supplied directly (in the absence of the usual official summaries by the chairmen of the committees) by M. C. Shield, head clerk of the House Committee on Appropriations.

³⁹ The item read in part: "For increasing the enforcement force, \$24,000,000, or such part thereof as the President may deem useful, to be allocated by the President as he may see fit . . . and to remain available until June 30, 1930."

RECAPITULATION OF APPROPRIATION ACTS, SECOND SESSION OF SEVENTIETH CONGRESS

Title of Act	Budget estimates, Seventieth Congress, second session	Totals of bills as reported by House Committee on Appropriations	Appropriations, Seventieth Congress, second session	Increase (+) or decrease (-) Appropriations Compared with Budget Estimates	Increase (+) or decrease (-) Seventieth Congress, second session Compared with first session
<i>Regular acts, fiscal year 1930</i>					
Agriculture, Department of.....	143,939,095	143,148,047	144,511,554	+572,459	+5,372,760
District of Columbia.....	38,573,722	38,213,150	38,472,615	-101,107	+847,407
Independent Offices.....	540,992,930	541,314,144	541,445,740	+452,810	+13,852,629
Interior Department.....	285,743,345	283,287,963	285,585,463	-157,882	+12,929,424
Legislative Establishment.....	18,826,265	18,645,052	18,660,645	-165,620	+913,751
Navy Department.....	361,455,132	347,450,448	360,236,697	-1,228,435	-1,909,115
Departments of State, Justice, Commerce, and Labor:					
State.....	14,603,598	14,600,478	14,600,478	-3,120	+644,523
Justice.....	28,103,870	27,937,370	27,937,370	-166,200	+1,178,027
Commerce.....	58,456,749	58,519,609	58,577,609	+120,860	+20,440,649
Labor.....	10,710,430	10,715,430	10,765,430	+55,000	-202,910
Total.....	111,874,347	111,772,887	111,880,887	+6,540	+22,060,289
Treasury and Post-Office Departments:					
Treasury.....	303,423,434	303,459,664	303,674,474	+251,040	+7,282,456
Post-Office.....	815,989,325	813,215,725	814,615,725	-1,373,600	+49,665,683
Total.....	1,119,412,759	1,116,675,389	1,118,290,199	-1,122,560	+56,948,139
War Department:					
Military.....	328,398,247	328,038,815	332,310,332	+3,912,085	+22,708,763
Non-Military.....	122,249,420	107,089,600	121,479,030	-770,390	+32,563,377
Total.....	450,647,667	435,128,415	453,789,362	+3,141,695	+55,272,140
Total, Regular Annual Acts.....	3,071,475,263	3,035,636,495	3,072,873,162	+1,397,898	+166,287,426
<i>Deficiency Acts</i>					
First, 1929.....	103,616,946	84,128,310	97,613,461	-6,003,485	..
Second, 1929.....	103,322,527	191,625,765	114,387,982	+11,065,455	..
Total, Deficiency Acts.....	206,939,473	275,754,075	212,001,444	+5,061,970	-134,593,521
Total, Regular annual and deficiency acts.....	3,278,414,737	3,311,389,570	3,284,874,606	+6,459,869	+31,333,904
Miscellaneous relief, claims and other acts (estimated).....			1,700,000	+1,700,000	+708,471
Total, regular annual, deficiency and miscellaneous.....	3,278,414,737		3,286,574,606	+8,159,869	32,042,375
Permanent and Indefinite appropriations...	1,378,679,735		1,378,679,735		-844,171
GRAND TOTAL.....	4,657,094,473		4,665,254,342	+8,159,869	+31,198,203
GRAND TOTAL, EXCLUSIVE OF POSTAL SERVICE, FROM POSTAL REVENUES.....	3,813,595,653		3,823,349,122	+9,753,469	-33,699,984

member on the appropriations committee of the House, was defeated in the attempt to saddle it with the item of \$24,000,000; the vote was 125 (8 Republicans, 117 Democrats) to 239 (195 Republicans, 42 Democrats, 1 Socialist, 1 Farmer Labor). In the end the House, and with it the Administration, triumphed in conference, and the Senate accepted the first deficiency appropriation bill without the added funds for prohibition enforcement.⁴⁰

Comparing the total appropriations with those of the first session, it will be observed that there was an increase of only \$31,198,203; and even a decrease of \$33,699,984, if the postal service is disregarded. The comparison is misleading, however, unless it is noted, first, that the regular annual appropriation acts for 1930 exceeded those for 1929 by \$166,287,426, and, second, that the deficiency acts aggregated \$134,953,521 less than those of the preceding session; and unless it is remembered that the latter acts carried appropriations which would have been made in the second session of the Sixty-ninth Congress if they had not been caught in the Senate filibuster in March, 1927. In this light the trend of the appropriations confirms the forecast of the director of the budget, who remarked at the meeting of the Government Business Organization on January 28, 1929: "That 1927 figure of \$2,974,029,674.62 is the lowest expenditure level this government will ever see When legitimate operating expenses fail to show development and growth it will be evidence that something is radically wrong with the Republic." These are reassuring words from the founder of the Woodpecker Club and the Casualty Club.

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Changes of Bureau Chiefs in the National Administration of the United States, 1926-29. It is the purpose of this note to bring down to date an analysis of the selection and tenure of bureau chiefs in the national administration offered by the writer in this *Review* in 1926.¹ A complete enumeration of the changes that have taken place at this

⁴⁰ The vote on the conference report—66 (33 Republicans, 33 Democrats) to 16 (7 Republicans, 9 Democrats)—had to do mainly with the unsuccessful attempt to attach a proviso for some kind of open procedure in tax refunds—a matter much bruited during the session.

¹ Vol. 20, pp. 548-582, 770-811, August and November, 1926. The articles dealt especially with conditions in 54 bureaus in the departments of Treasury, Interior, Agriculture, Commerce, and Labor. The present study is confined to these same departments.

crucial level in the civil service during an interval of nearly three years has suggestive value, at least in indicating the trend of our bureaucracy.

The mode of approach in the original study was primarily biographical. The bureaus were classified with reference to the manner of selection and the nature of the prior experience of the bureau chiefs then in office.² The same method and arrangement are used in dealing with shifts since 1926.

II

First to be considered are the new bureau chiefs whose positions are in the classified competitive service under the supervision of the Civil Service Commission. Replacements in this group since 1926 have involved the amalgamated Bureau of Chemistry and Soils, the Bureau of Dairy Industry, the Bureau of Agricultural Economics, the Bureau of Biological Survey, the Forest Service, the Bureau of Entomology, and indirectly the newly constituted Food, Drug, and Insecticide Administration and the Plant Quarantine and Control Administration—all in the Department of Agriculture; also the National Park Service in the Department of the Interior. In two instances competitive examinations have been employed; in another, one has been ordered; in the remaining cases the new chiefs have been chosen by promotion from within the competitive classified service.

Examinations were used in selecting the head of the recently created Bureau of Chemistry and Soils and in filling the vacancy caused by the resignation of the chief of the Bureau of Dairy Industry. It is perhaps significant that resort was not made to the provision known as civil service Rule II, section 10, which authorizes the Civil Service Commission, upon application by the department in question, to waive examination if it is convinced "that the duties or compensation of a vacant position are such, or that qualified persons are so rare, that in its judgment such positions cannot . . . be filled at that time through open competitive examination." Certainly it is significant

² The bureaus were accordingly arranged in four groups: (1) those having chiefs who had been appointed under the merit system administered by the Civil Service Commission; (2) those which have self-administered closed systems of commissioned personnel, although their chiefs are presidential appointees; (3) those of which the chiefs in office in 1926 were persons who had been employed in the national administration before they became heads of bureaus; and (4) those of which the chiefs in office in 1926 were persons who had no prior experience in the national administration.

that both examinations were of the so-called committee type. The probability that this very flexible variant of the non-assembled test will prevail in the future when examinations are held to fill such positions as bureau-chiefships seems to be indicated in the following quotation from an informal letter of explanation received by the writer from the secretary of the Civil Service Commission: "The only reason this type of examination had not been used to fill the position of chief of bureau was that no vacancy in a chiefship which was subject to the civil service rules had occurred since this type of examination had been devised for filling higher grade places.³

In view of the interest which therefore attaches to the committee type of examination, it is worth while to quote further from the Commission's letter: "In conference between the officials of the department and the Civil Service Commission, a committee is formed composed of one representative of the Civil Service Commission, acting as chairman, and two and sometimes four persons who are recognized specialists in the particular line of work in which the vacancy happens to be. One of these persons represents the department involved, and the remainder of the committee is chosen from specialists outside the government service. An announcement of the examination is then prepared showing the personnel of this committee who will rate the papers, as well as giving a description of the vacancy and a statement of the qualifications required for filling it. This announcement is sent to technical journals interested in the special line of work involved, and also to the heads of departments at the universities where this special line of work is carried on. The members of the committee, as well as some other outside specialists, are requested to furnish names to the Commission of men who, in their judgment, are qualified to fill the vacancy. These men are communicated with direct and re-

³ Under date of March 23, 1929, the secretary of the Commission informed the writer, unofficially: "... the reclassification of the service by the so-called Welch Act, effective July 1, 1928, has resulted in a number of recent calls on the Commission to fill positions now paying \$5,200 and \$6,500 a year. The committee form of examination will probably be used to secure eligibles for filling positions paying \$5,200 or more, at least in all cases where the responsibilities involved seem to warrant such a course." In the summer of 1928 the committee method was used in the selection of M. W. Stirling as chief of the Bureau of American Ethnology of the Smithsonian Institution. The special examining board in the case consisted of Dr. C. G. Abbott, secretary of the Smithsonian Institution, Dr. A. V. Kidder, ethnologist with the Carnegie Institution, and F. W. Brown, of the examining division of the Commission.

quested to file application if they are interested in being considered. The applications received as a result of these three methods of publicity are considered by the committee, and those who do not meet the prerequisites laid down in the announcement are canceled, while those who do meet the requirements are given an eligible rating on a basis of 100 per cent, and a register is made up of the eligibles. From this register the three top names are thereupon certified to the department for consideration in filling the vacancy."

The first bureau chief to be chosen by the type of examination just described was Dr. Henry G. Knight, head of the new Bureau of Chemistry and Soils. This agency resulted from a reorganization which took effect on July 1, 1927, in accordance with provisions in the agricultural appropriation act approved on January 18. It brought together the research functions of the former bureau of chemistry, the work previously done by the bureau of soils, the activities of the hitherto separate fixed-nitrogen research laboratory, and units in the Bureau of Plant Industry concerned with soil-fertility and soil-bacteriology. There was thus created an essentially research agency comprising the three main branches of chemical and technological research, soil investigations, and fertilizer and fixed-nitrogen investigations. The regulatory activities of the bureau of chemistry were transferred to a new Food, Drug, and Insecticide Administration,⁴ into which was also merged the former insecticides and fungicides board. The whole reorganization, like the establishment a year later of the Plant Quarantine and Control Administration, was in line with the policy indicated by Secretary Jardine in his annual report for 1928, where he said: "During my term of office the improvement of the Department's organization has been sought by carrying out, as far as practicable, the principle of segregating research and regulatory work into separate administrative units."⁵

⁴ The Food, Drug, and Insecticide Administration has been in charge of W. G. Campbell, director of regulatory work for the Department of Agriculture as a whole. His connection with the department dates to 1907, and previously, after practicing law for a few years, he had gained experience in food and drug enforcement work in the Kentucky State Agricultural College service. He was assistant chief of the former bureau of chemistry from 1916 to 1923, when he was made director of regulatory work—one of five virtual assistant secretaries now provided in the organization of the Department of Agriculture. When conditions have become stabilized, it is expected that a distinct chief for the Food, Drug, and Insecticide Administration will be appointed.

⁵ *Report of the Secretary of Agriculture*, 1928, p. 47. Another view of the

An examination of candidates for the post of chief of the Bureau of Chemistry and Soils was originally announced for April 5, 1927, in the sense that applications were to be filed by that time. In the meantime, however, the position was reclassified in a higher grade of the professional service in order to bring its salary in line with those of the chiefships of the major bureaus of the department.⁶ This step

reorganization referred to is presented by the distinguished, now venerable, still active, and always pungent Dr. Harvey W. Wiley, head of what was the Bureau of Chemistry from 1883 to 1912, and in many senses the father of food and drug legislation, in a book entitled *The History of a Crime*, which probably will be published during the year. Dr. Wiley argues that the provision for the Bureau of Chemistry and Soils in the agricultural appropriation act was general legislation which might have been stricken out on a point of order. Begging the question (an interesting one for the student of administration) whether an exclusively policing agency like the new Food, Drug, and Insecticide Administration is inherently less capable of drastic regulation than a mixed agency such as the Bureau of Chemistry, it is clear to the observer that Dr. Wiley's criticism of general tendencies in food and drug enforcement illustrates the difference of viewpoint and spirit between the pioneering and crusading period of governmental regulation and the later collaborative stage, with its attendant consultation and inevitable compromises.

⁶ On April 1, 1927, the Federal Personnel Classification Board assigned the P-7 grade in the Professional and Scientific Service (P&S) to the chiefships of the bureaus of Public Roads, Forest Service, Animal Industry, Plant Industry, and Agricultural Economics, which entitled the occupants of these positions to the \$7,500 salary.

Since that time, especially after the Welch Act became effective on July 1, 1928, numerous changes of classification and a general scaling up of compensation have affected bureau chiefs in all departments. A summary of the present classification of bureau chiefs and their rates of compensation (as of March 15, 1929) is given by departments: (1) *Agriculture*. Of 14 bureau chiefs, 11 are classified as P&S-8, and of these one receives \$9,000 per annum; 2, \$8,500; and the remainder \$8,000. The other three are classified P&S-7; one receives \$7,000 and the others \$6,500. (2) *Commerce*. Six are classified P&S-8 and receive \$9,000; one, P&S-7, receiving \$7,500. The others are classified in the Clerical, Administrative and Fiscal Service (CAF); two in grade 15, receiving \$9,000; two in grade 14, receiving \$7,500. (3) *Labor*. Two, classified in P&S-8, draw \$8,000; two others, in P&S-7, receive \$7,500 and \$6,500. One is in CAF-15, drawing \$8,000; one in CAF-14, at \$7,000; and another in CAF-13, \$5,600. (4) *Interior*. One, drawing \$10,000 by special act, is classified as P&S-9; another, in P&S-8, is paid \$9,000; and a third, in P&S-7, \$7,500. The other bureau chiefs are in CAF grades: two in grade 15, at \$8,000; and two in grade 14 at \$7,500 and \$6,500. (5) *Treasury*. All the bureau chiefs in the Treasury (leaving out the unclassified heads of the Public Health Service and the Coast Guard) are classified in CAF grades: one in grade 16 at \$10,000; two in grade 15 at \$9,000; three in grade 15 at \$8,000; one in grade 14 at \$6,500; and one in grade 13 at \$6,000.

was prompted by the fact that candidates had not been offering themselves in sufficient numbers. The change in classification necessitated the announcement of a new examination, requiring the filing of applications before June 7, 1927. "In view of the importance of the position in the field of chemistry and soils," read the announcement, "and to secure the appointment of a thoroughly qualified man, the Commission will follow its committee method of competitive examination. . . . Instead of the usual form of civil service examination, the qualifications of candidates will be passed upon by a special board of examiners, composed of Dr. A. F. Woods, director of scientific work in the Department of Agriculture, Dr. Jacob G. Lipman, director of the New Jersey Experiment Station, and Mr. Frederick W. Brown, consulting examiner of the United States Civil Service Commission. For the purposes of this examination, those men will be examiners of the Civil Service Commission." It was stated that the minimum qualifications for consideration were "scholarship equivalent to that represented by a doctor of philosophy degree from a college or university and recognized eminence in chemical research," and also experience "of a length and character to demonstrate high ability in the direction and prosecution of chemical and soil research, administrative capacity of the highest order, and thorough familiarity with the literature of chemistry and soils. . . ." Candidates were required only to execute and file a statement on one of the forms of the Commission, accompanied by a list of technical publications and reprints of such as were available.

In all, twenty-seven applications were received by the examining committee. Of these, six were given an eligible rating and the three highest were certified to the Secretary of Agriculture. In September, 1927, the Department announced the appointment of Dr. Henry G. Knight. It seems that of all the candidates the committee thought him the best qualified. It is interesting to add that he probably would not have been a candidate of his own initiative. Born in Kansas in 1878, Dr. Knight did his undergraduate work at the University of Washington, from which he received his bachelor's degree in 1902. In 1917, he was given the degree of doctor of philosophy at the University of Illinois. In the meantime, he had been associated with the departments of chemistry in the universities of Washington and Chicago between 1901 and 1904, and with the University of Wyoming, at which he was professor of chemistry and state chemist from 1904 to 1910. Thereafter Dr. Knight was director of the Wyoming Experi-

ment Station and dean of the College of Agriculture until 1918; dean and director at the Oklahoma Agricultural College from 1918 to 1921; and director and research chemist in the experiment station at the University of West Virginia from 1922 to 1927. At the time of his appointment as chief of the Bureau of Chemistry and Soils he was dean of the West Virginia College of Agriculture.

Before leaving this case of appointment of a bureau chief by open competitive examination it is well to add a word lest the reader raise the question whether it would not have been more proper to find the new leader among the heads of the three agencies merged in the Bureau of Chemistry and Soils. Milton Whitney, in charge of soils from 1894 until 1927, was then sixty-seven years of age and in far from good health; his death followed shortly. Dr. C. A. Browne, head of the Bureau of Chemistry from 1923, had already indicated that he was too much interested in research to welcome increased administrative responsibilities. He continues as assistant chief in charge of chemical and technological research in the new bureau. The same considerations operated in the case of the brilliant Dr. F. G. Cottrell, head of the former fixed-nitrogen research laboratory, who now serves as chief of the branch of fertilizer and fixed-nitrogen investigations in the Bureau of Chemistry and Soils. Earlier in his career he showed his determination not to be diverted from research by resigning in 1920 as director of the Bureau of Mines, a post he had taken on the stipulation that he was to be relieved at the end of a year. Again he deserves applause for the fine spirit with which he has allowed his work in the fixed-nitrogen laboratory to be drawn within the compass of the Bureau of Chemistry and Soils, to which logically it belongs.

The type of examination used in selecting the head of the Bureau of Chemistry and Soils was employed a year later in choosing O. E. Reed as chief of the Bureau of Dairy Industry. This position was opened early in 1928 by the resignation of Dr. C. W. Larson in order to become director of the National Dairy Council, an unofficial, promotional agency. The acting chief of the bureau, Dr. L. A. Rogers—a technical bacteriologist—eliminated himself from consideration; it may be added that he continues in charge of its dairy research laboratories. A special board of examiners was constituted consisting of Dr. A. F. Woods, director of scientific work in the Department of Agriculture, Dr. R. A. Pearson, president of the University of Maryland, Dean J. H. Skinner of Purdue University, Dr. L. A. Rogers, and F. W. Brown, of the examining division of the United

States Civil Service Commission. It was announced that "the examination will consist solely of the consideration of qualifications by the special board." Again the stated minimum qualifications included "scholarship equivalent to that represented by a doctor of philosophy degree from a college or university of recognized standing." The announcement added that "the committee will take steps to obtain evidence that the applicant is of a coöperative disposition and that he has the ability to make and keep friends. . . ." The call brought forth sixteen applicants, of whom nine were found eligible. Mr. Reed was selected on May 24, 1928, from among the three highest names on the list. At the time he was professor of dairy husbandry and head of dairy research in the experiment station at the Michigan State Agricultural College, having held those positions since 1921. Previously he had served in similar capacities at Purdue (the agricultural college of Indiana) from 1918 to 1920, and at the Kansas State Agricultural College from 1910 to 1918, following his completion of undergraduate and graduate work at the University of Missouri in 1910. In 1925-6 he was president of the American Dairy Science Association.

Apart from the two cases noted, the bureau heads subject to civil service rules who have been appointed since 1926 have been chosen by promotion and transfer, not open competitive examination. In the bureaus of Agricultural Economics and Entomology, and in the National Park Service, the person who was second in command was chosen to fill the vacancy. In the Forest Service, although the associate chief was passed by, the post went to one of the assistant chiefs. In the Bureau of the Biological Survey the new chief was drawn from a different but related bureau in the same department, where at the time he was one of the assistant chiefs.

Dr. C. L. Marlatt, associate chief of the Bureau of Entomology, was advanced to the position of chief in October, 1927, when, at his own request, Dr. L. O. Howard was relieved of active administrative duties.⁷ Dr. Howard, it may be added, was then in his seventieth

⁷ The Department of Agriculture is adopting what seems a sound policy for the retirement of bureau chiefs. The Secretary of Agriculture thus expresses it: "After years of meritorious service devoted to administrative work, it seems fitting that members of the Department who have attained distinction in science should be relieved of executive responsibilities, so that they may devote all their energies to research. Accordingly, at their own request, I have relieved from further administrative duties the former chief of the Bureau of

year; he had been continuously in the federal service since 1878, and chief entomologist since 1894. Dr. Marlatt, having graduated from the Kansas State Agricultural College in 1884, permanently joined the staff of the United States Department of Agriculture in 1889, after a short term in academic service. He has followed closely on the heels of his predecessor at many points. In 1894, for example, he was recommended to succeed Dr. Howard as first assistant in what was then the division of entomology. He was assistant chief of the Bureau of Entomology after 1905 and associate chief in charge of regulatory work after 1922.

Dr. Marlatt has also been temporarily in charge of the new Plant Quarantine and Control Administration established on July 1, 1928, as a phase of the policy to which reference has already been made. In it have been integrated the functions of the Federal Horticultural Board, the regulatory work hitherto done under the direction of the Bureau of Entomology in connection with the gypsy and browntail moths, Japanese and Asiatic beetles, the European corn-borer, and the Mediterranean fruit-fly, and also some regulatory work conducted by the Bureau of Plant Industry in connection with white pine blister-rust quarantine.⁸ In accordance with a provision in the agricultural appropriation act for 1929, the Federal Horticultural Board has been abolished. In its place an interdepartmental advisory board called the Federal Plant Quarantine Board has been set up in the new administration. It was natural, especially in the formative period after the reorganization, that Dr. Marlatt should direct not only the Bureau of Entomology but also the Plant Quarantine and Control Administration. He was virtually the author of the basic plant quarantine act of 1912, and he was chairman of the Federal Horticultural Board from the time of its inception in this act until it was merged in the Plant Quarantine and Control Administration. Recently a call was issued for applications, due by May 1, 1929, in an

Biological Survey, E. W. Nelson, an internationally recognized leader in the study and conservation of wild life; the former chief of the Bureau of Entomology, L. O. Howard, long recognized as a distinguished investigator in entomology. . . .” *Report of the Secretary of Agriculture*, 1928, p. 48. Even if it were no more than kindly euphemism, the procedure would be commendable.

⁸ “It had long been felt that the growing volume of regulatory work was materially interfering with the development and prosecution of research work, which was the primary purpose of the Bureau [of Entomology].” *Report of the Entomologist for the Fiscal Year ending June 30, 1928*, p. 1.

examination of the committee type to choose a separate chief of the Plant Quarantine and Control Administration at an initial salary of \$6,500. The special examining board was announced to comprise the director of regulatory work in the Department of Agriculture, the assistant chief of the Bureau of Entomology, and the chief examiner and assistant chief of the examining division of the Civil Service Commission. The qualifications include "a minimum period of ten years' responsibility for the administration of important plant quarantine work."

Another clear-cut promotion was the appointment in July, 1928, of Nils A. Olsen, senior in service of the two assistant chiefs, to be chief of the Bureau of Agricultural Economics. This bureau has so grown in stature that its appropriations for 1930 total \$6,312,660; in addition, its work—as in crop-forecasting, advice regarding policies of agricultural relief, etc.—inherently offers more opportunities for trouble than that of any other branch of the Department of Agriculture. The vacancy at the top was caused by the resignation of Lloyd S. Tenny, who had been assistant chief at the time of the appointment of Thomas P. Cooper as chief in 1925, and who succeeded him when Dean Cooper returned to the State Agricultural College at the University of Kentucky in 1926. Mr. Tenny resigned to go with the Associated California Fruit Industries, Inc. Rumors about salaries can usually be discounted heavily, but the writer has it on what seems good authority that the compensation promised Mr. Tenny in his new position (guaranteed by the Bank of Italy, it appears) was to be \$17,500 for the first year, \$20,000 for the second, and \$22,500 for the third. The new chief of the Bureau of Agricultural Economics joined the Department of Agriculture in 1919, at the age of thirty-five, as an assistant agricultural economist. Previously he had done graduate work at Johns Hopkins, Wisconsin, and Harvard, had been an instructor at Muhlenberg and an assistant in history at Harvard, and from 1912 to 1919 a farm manager. In the Bureau of Agricultural Economics he was advanced to the post of assistant chief in charge of research; he collaborated with the late Secretary Wallace in his book, *Our Debt and Duty to the Farmer*; he stood next to Mr. Tenny, enjoying also cordial and close relations with the office of the Secretary of Agriculture. Mr. Olsen's promotion to the position of chief of the bureau was a logical step in 1928, especially in view of the fact that the Department chose not to invite an open competitive examination in which (the writer is credibly informed) as many as thirty candidates were likely to compete.

In this case, promotion was accomplished in the face of criticism from at least one source. Southern cotton producers had been angered by the bureau's price forecast in September, 1927. Not only Tenny but also Olsen, second in command, took the hammering of a Senate investigation.⁹ On July 6, 1928, after Mr. Olsen's appointment as chief had been announced, Representative Rankin of Mississippi went so far as to write to the Secretary: "As a member of Congress from an agricultural state whose farmers have suffered greatly as a result of the misconduct of the Bureau of Agricultural Economics and this man, Olsen, I desire to protest against his appointment . . . [which is] little short of a criminal abuse of the powers vested in you as Secretary of Agriculture." To the bystander the promotion of Mr. Olsen seems the more praiseworthy because it was not entirely the line of least resistance.

Another promotion was the selection of R. Y. Stuart, assistant forester in charge of public relations, to head the Forest Service. The former chief, W. B. Greeley, resigned on April 30, 1928, to take a position with the West Coast Lumber Manufacturers' Association; he had been with the Forest Service since 1904 and chief forester since 1920. In accepting his resignation, the Secretary of Agriculture wrote: "It would be impossible to overstate the high character of the service that has been rendered by Col. Greeley to the welfare of the American people. . . . His public service has been continuous over a period of more than twenty-three years, his entire working life up to the present time." Col. Greeley's successor has had very similar experience. He entered the Forest Service in 1906, at the age of twenty-three, directly after his graduation from the Yale Forestry School. At the time of his appointment as chief of the service, he was an assistant forester in charge of one of the seven branches into which the work of the bureau is divided. The intervening period of twenty-two years had been spent wholly in the employ of the Forest Service—at first in the field, after 1912 at Washington—with only two breaks. During the war he was furloughed for military service, rising to the rank of commanding officer of a battalion of the 20th (Forest) Engineers. In 1920 he went to Pennsylvania as deputy commissioner of forestry under Gifford Pinchot, then commissioner

⁹ Hearings before a sub-committee of the Committee on Agriculture and Forestry, U. S. Senate, 70th Congress, 1st Session, pursuant to S. Res. 142—a resolution to investigate the recent decline in cotton prices (March-May, 1928), p. 1482.

of forestry. He succeeded Mr. Pinchot as commissioner of forestry when the latter was elected governor of Pennsylvania. When the state departments were reorganized in 1923, Major Stuart became secretary of the Department of Forestry and Waters. It is doubtless to his credit that he did not survive the Pinchot administration. In February, 1927, he returned to the United States Forest Service as head of the branch of public relations. In view of the growing importance of state coöperation in the work of the Forest Service, the value of such an interval of state service in a responsible position can hardly be overestimated. Mr. Stuart's case affords further reason for commending the wisdom of the civil service regulation (Rule X, section 3) which preserves the retransfer privileges of a federal employee in the classified competitive service who "has served continuously and satisfactorily . . . in the service of a state, county, municipality, or foreign government in a position in which he has acquired valuable training and experience."

The selection of Paul G. Redington as chief of the Biological Survey in May, 1927, was hardly less a case of promotion because it involved his transfer from the Forest Service, where he was assistant chief in charge of public relations. No examination was necessary. "Mr. Redington was selected as the best available man in the Department of Agriculture," wrote the secretary of the Civil Service Commission. "He was transferred to the Biological Survey long enough to familiarize himself with the work and then, upon the resignation of Dr. Nelson, was promoted to the chiefship. Mr. Redington had a civil service status which permitted the approval of his transfer and promotion without question." After graduating from Dartmouth in 1900, and from the Yale Forestry School in 1904 with the degree of master of forestry, Mr. Redington spent the next twenty-three years in the Forest Service, broken only by a six-months term during 1918 as city manager of Albuquerque, New Mexico, in the region in which he had been serving as district forester. Following that, he served for six years as district forester in the California district, administering the eighteen national forests in that state—in one of which (it may be added, to illustrate the spiral staircase of the civil service) he had been supervisor for a period of five years a decade before. He was moved to Washington as one of the seven assistant chiefs of the Forest Service about a year before he was chosen to be head of the Biological Survey.

A few comments are ventured regarding the fact that in the case of Mr. Redington the new chief was taken from outside the Biological Survey itself. In the first place, it can be said that the four-fold work of the Survey—research regarding wild life, services in the field to combat animals and rodents inimicable to agriculture, police functions in connection with the protection of migratory birds, and latterly the establishment and administration of wild-life refuges—yield a relatively high common denominator between the Biological Survey and the Forest Service. Apart from this, however, and apart from the indefeasably personal element in all administration, the observer senses that there may have been other reasons at the time for looking around outside of the Survey. The Survey had incurred criticism in connection with its previous conservative opposition to a proposed reduction of duck bag-limits, in which it seemed then to be weakening. The Survey, moreover, had naturally been involved in the controversy regarding the proposed legislation for migratory bird refuges, involving the question whether the Department of Agriculture should be allowed to permit hunting in the refuges under certain conditions. It may be observed that the advocates of inviolate sanctuaries were destined to triumph in the final terms of the Migratory Bird Conservation Act of 1929.¹⁰ At the time of his appointment, Mr. Redington was perhaps freer from embarrassments because he had not been immediately in the Bureau of Biological Survey.¹¹ It is an argument which presidents and heads of departments should use sparingly.

In addition to the foregoing instances in the Department of Agriculture, the selection of Horace M. Albright as director of the National Park Service in the Department of the Interior took place under the merit system by promotion without examination. The appointment was made necessary by the resignation, on account of ill health, of Stephen T. Mather, who had dealt with parks in the Department of the Interior since 1915, and who had been the head of the National Park Service from the time of its creation as an integrated service in 1917. In accepting Mr. Mather's resignation, effective January 8,

¹⁰ Public No. 770, 70th Congress, 2nd Session, approved Feb. 18, 1929.

¹¹ A naturalist of note (known for his zeal as well as for his scientific attainments) remarked in a letter to the writer at the time, in reply to some questions regarding Mr. Redington's appointment: "Is it, then, any wonder that Secretary Jardine, who had been misled by persons under him on whose advice he had a right to rely, smarting under the sting of a false position, went clear afield for a successor to the man who had got him into a sad mess?"

1929, the Secretary of the Interior voiced an appreciation widely echoed in editorial comment: "I am taking this opportunity, on behalf of the millions of Americans who enjoy the national parks each year, of assuring you of their grateful appreciation of the services you have rendered in developing and preserving these great national scenic areas . . . you have achieved results that I believe no other man could have accomplished in the early days of organization. . . . Not the least of your achievements was the ability of attracting to the service an unusually high type of men whose loyalty to their parks and to the chief who formulated its policies will insure its continued success." The work has now been taken up by a man who has spent virtually his entire active life in national park administration. Born in California in 1890, Mr. Albright did his undergraduate work at the University of California and for a short time was associated with instruction in economics there. Moving to the District of Columbia, he received the degree of LL. B. from Georgetown in 1914. For three years thereafter he was clerk to Secretary Lane and an assistant attorney in the Department of the Interior, assigned mainly to park matters. For two years following he was assistant director of the new National Park Service. Later (led by family considerations to prefer Western service) he acted from 1919 until 1929 as assistant director in the field, and at the same time as superintendent of the Yellowstone National Park. It was the appeal of Mather's work which had originally kept him in the service, and he remained Mather's closest adviser throughout, being the closer because of the former director's tendency to keep in the field.

II

Akin to the bureaus having heads selected under the merit system administered by the Civil Service Commission are three agencies which are characterized by self-administered, closed systems of commissioned personnel, although their chiefs are appointed by the President and confirmed by the Senate. The statutory terms of the heads of all these expired during the period under review. Two were reappointed. On January 11, 1928, Rear Admiral F. C. Billard, commandant of the Coast Guard since 1924, was renominated and confirmed for another term of four years. He originally entered the Revenue Cutter Service (later merged in what is now the Coast Guard) in 1894 at the age of twenty; he was trained in its own cadet school and has spent his life in its employ. On January 27, 1928, Dr. Hugh S.

Cumming (who entered the United States Public Health Service in 1894, a year after his graduation from medical school) was renominated and confirmed as surgeon-general for a third term of four years. On April 22, 1929, Raymond S. Patton, a graduate of Western Reserve in 1904, who has been with the Coast and Geodetic Survey since that time and one of the assistant directors (in charge of chart production) since 1919, was nominated as director of the Coast and Geodetic Survey in succession to E. Lester Jones.

III

So far as the law goes, all of the other bureau chiefs named since 1926 were appointed without restriction by a merit system or anything like it. It is notable that, with two exceptions, all the persons chosen were employed in the national administration at the time of their selection as heads of bureaus. One of these exceptions—the Commissioner of Education—was only technically such, for the new commissioner was deliberately sought and found in the field of state educational administration.

On June 20, 1927, Arthur J. Tyrer was made commissioner of navigation, in charge of the Bureau of Navigation in the Department of Commerce. He originally entered government employment in 1902, and in the following year he was made private secretary to Eugene T. Chamberlain, who was commissioner of navigation from 1893 to 1921. As early as 1909, Mr. Tyrer was deputy commissioner. Meanwhile he completed a four-year law course at George Washington University. As deputy commissioner, he was the assistant, and frequently the acting chief, during the incumbency of D. B. Carson, a politically connected, elderly, retired railroad-and-river-boat man from Tennessee, who was commissioner of navigation from 1921 to 1927. Mr. Tyrer's appointment is reassuring.

Gratifying as an evidence of promotion in an office marked by the uncertain, irregular tenure of appointments influenced by party or by personal considerations has been the appointment of John W. Pole as comptroller of the currency, in place of J. W. McIntosh, resigned. Born in England in 1870 and trained there for engineering, Mr. Pole came to the United States when about the age of twenty. For some ten years he was in private banking in Decatur, Alabama, as an officer and as director. Becoming bank examiner in the fourth federal reserve district, he worked up to the post of chief national bank examiner in the sixth federal reserve district. In 1923 he was desig-

nated as chief national bank examiner for the entire United States. In leaving the office of comptroller of the currency, Mr. McIntosh said of his successor: "Mr. Pole is the highest paid man in this bureau, having been successively promoted until his salary is at the present time \$17,000 per annum. For the four years of my incumbency as comptroller of the currency, he has been my principal reliance in the handling of difficult and intricate banking matters, and I have no hesitation in giving him full authority to represent me in distant parts of the United States in such situations." Nominated on November 20, 1928, Mr. Pole was twice confirmed by the Senate. As a member of the committee on banking and currency, Senator Glass took umbrage at the fact that the nomination (following a precedent inadvertently established in connection with McIntosh's nomination) had been referred to the Senate committee on finance. As a matter of principle, with no hostility to Mr. Pole himself, Senator Glass moved and secured a reconsideration. Mr. Pole was reconfirmed on December 14, 1928.

The Bureau of Prohibition was made a separate bureau in the Treasury Department by an act approved on March 3, 1927. Previously the work of prohibition enforcement had been conducted by a so-called prohibition unit in the Bureau of Internal Revenue. The new legislation extended the merit system to the agents of the Bureau of Prohibition, but provided that its chief should be appointed by the Secretary of the Treasury without regard to civil service restrictions. As it turned out, the selection of James M. Doran in April, 1927, to be the first occupant of the post of commissioner of prohibition in the independent bureau would not have been embarrassed by such restrictions. He had, in fact, come up through the competitive classified service. Born in North Dakota in 1885, the son of a minister, he graduated from the University of Minnesota in 1907, after specializing in chemistry. Later, while in the federal service, he carried on graduate work in George Washington University in 1912 and 1913. Beginning as a chemist in the Bureau of Internal Revenue in 1907, he became head of its division of industrial alcohol and chemistry in 1920. After December, 1926, he was head of the technical division of the prohibition unit. His selection as commissioner of prohibition was in effect a promotion.

The act of March 3, 1927, to which reference has been made in the preceding paragraph, also gave statutory recognition to a Bureau of Customs in the Treasury Department. Here, also, it was provided that

the commissioner at its head should be named by the Secretary of the Treasury without regard to civil service restrictions. E. W. Camp, in charge of customs administration since 1922, has been kept on as commissioner. His experience prior to 1922 had been gained on the legislative side of government, for he was clerk to Representative Joseph Fordney for eleven years, and subsequently, from 1919 to 1922, he was clerk of the House committee on ways and means, of which Mr. Fordney had become chairman. To the regret of the Treasury, Mr. Camp resigned on April 5, 1929, to become associated with the American Sugar Refining Company in charge of its customs matters.

Traditions of internal recruitment and stability of tenure seem to be forming around the office of director of the mint, although the office is a presidential one, with senatorial confirmation, and although the statutory term is five years. Robert J. Grant was a mining engineer by profession, but he had been superintendent of the Denver mint for two years before he was appointed director of the mint in 1923. In December, 1928, he was renominated and confirmed.

Thoroughly regrettable, although not discreditable to the recently appointed treasurer of the United States, Walter O. Woods, has been the defeat of the Treasury in its attempt to fill the position by promotion. This relatively routine post, carrying a salary of \$8,000 a year, became vacant in 1928 as a result of the voluntary resignation of Mr. White, an essentially political appointee who had occupied it since 1921. H. Theodore Tate was nominated in May, 1928, in what was a case of promotion for merit. Born in 1875, and employed for a time by railroad companies, Mr. Tate originally entered the government service in 1908 as a clerk in the office of the auditor of the Treasury. He was transferred to the office of the treasurer of the United States in 1913 and advanced through various clerical grades to the position of deputy assistant treasurer. In the Senate his nomination as treasurer was referred to the committee on finance, of which Senator Smoot of Utah is chairman. It seems that Mr. Smoot opposed confirmation, not because he had a candidate of his own, but because Representative Will R. Wood of Indiana, ranking majority member of the powerful House committee on appropriations, was vigorously pushing a friend, F. J. F. Thiel (also of Indiana), the assistant treasurer. It appears further that Mr. Wood's leverage had its fulcrum in the proposal of an assay office in Utah. As a result, Mr. Tate was not confirmed in the first session of the 70th Congress. He was given a recess appointment, and in December, 1928, his name was presented again.

Mr. Wood was very angry. An impasse resulted. Mr. Tate felt that he could not risk service without salary. Although loath to drop him, the Treasury withdrew his nomination on January 15, 1929, and in its place offered the name of Walter O. Woods,¹² then register of the treasury, who had the advantage of the political backing of Senator Curtis, the majority leader. Under these auspices, confirmation was secured on the same day, without the reference of the nomination to a committee. In retiring, Mr. Tate made the following statement: "At the time of my nomination last spring Representative Will Wood, of Indiana, expressed vigorous opposition to the confirmation of my appointment with the claim that another should have been appointed. His opposition having prevented confirmation to date, I formally requested Secretary Mellon by letter last week to recall my nomination in order to avoid any possible embarrassment to the Department." The under-secretary of the Treasury said of Mr. Tate: "There is not a blemish on his record . . . his whole service record in the Department has been most satisfactory, but he feels he does not care to go into a fight and the Secretary has agreed to seek withdrawal of his name." The incident illustrates the disadvantage of making bureau chiefs presidential appointees, subject to senatorial confirmation. On the whole, it is preferable to have them appointed by the heads of departments.

IV

As this complete enumeration of the appointments of bureau chiefs since 1926 in the departments of the Treasury, Interior, Agriculture, Commerce, and Labor draws to a close, it will be observed that in a narrow sense one can say that W. J. Cooper, commissioner of education, lacked experience in national administration prior to his appointment as chief. A realistic view, however, must treat his appointment as in truth a promotion, especially in view of the fact that the

¹² W. O. Woods joined the Treasury Department in 1921, serving (restlessly, it seemed) in a catch-all called the war loan staff. In June, 1927, he was made register of the Treasury in place of Harley V. Speelman. The facts indicated that Mr. Speelman was forced out by a play of personal, rather than party, politics within the Treasury Department. Mr. Speelman talked for a time about refusing to resign, but in the end it seemed that others knew more about his health than he did. The new register, Edward E. Jones, was a member of the Federal Farm Loan Board, from which he resigned in 1927; a farmer, among other vocations, he had been in the Pennsylvania legislature upwards of eighteen years and is known as "Good Roads Jones."

United States Bureau of Education finds its excuse for being in its coöperative relations with state and local school systems. The vacancy in question was caused by the resignation of Dr. John J. Tigert, commissioner since 1921, to become president of the University of Florida, on September 1, 1928. In filling the position the Department of the Interior indicated a preference for a man with experience in state educational administration. It was embarrassed in its search by the fact that the increase of salaries in school administration, not to mention other factors, tended to make the post of commissioner of education at \$7,500 relatively unattractive. At least one state commissioner of education was publicly reported to have declined it. In the end, an outstanding state superintendent (whose personal circumstances made the salary a lesser consideration) accepted it, and he was appointed and confirmed in January, 1929. The new commissioner is a graduate of the University of California, taught in several high schools, was superintendent successively at Piedmont, Fresno, and San Diego, and for two years was the state superintendent of education of California (at a salary of \$9,500). The *Journal of the National Education Association* remarked editorially in its issue for March: "The selection of State Superintendent William John Cooper of California to be U. S. Commissioner of Education is an admirable example of a presidential appointment on a professional basis." It seems that in the course of the search for a new chief only one person with political associations was mentioned seriously enough to give educators concern; he was a man who had been a city superintendent, a state superintendent from 1919 to 1923, and governor of his state from 1925 to 1928. In canvassing the field the Secretary of the Interior used the technique of individual consultation. The writer renews the suggestion with which he closed his earlier analysis of the selection and tenure of bureau chiefs: that the essential feature of the so-called committee type of examination should be invoked (as it can be, informally, without statutory change) in selecting even the presidentially appointed chiefs of bureaus.

It is appropriate to take note here of the policy of the new Administration. On March 8, 1929, the White House gave out the following statement: "In reply to a question from the press as to whether extensive changes are intended in the personnel of the government, the President said today that there were comparatively few changes contemplated. He proposes to adhere to the principle of retaining as many as possible of those public servants who have given honest and zeal-

ous service. It is traditional for the principal directing heads of the government whose appointments are at the pleasure of the President, both at home and in foreign service, to tender their resignations with the advent of a new President. Out of several hundred such officials, there are probably not more than 20 or 30 changes likely to be made at the present time. Some of these are the result of the determination of the incumbents that they have given sufficient of their time to public service and wish to take this occasion to retire to private life. Some changes will be the result of promotion and shifts from one position in the government to another." It is understood that all bureau chiefs who held office at the pleasure of the President—that is, presidential appointees serving without stated statutory term—did tender their resignations. At the end of March only two had been accepted. Both were in the Department of the Interior, and both involved bureau chiefs whose appointment in 1921 had been obviously political.

On March 12, with graceful regret and the suggestion that he proposed "later to offer him another important position in public service," the President accepted the resignation of the commissioner of Indian affairs, Charles H. Burke. Mr. Burke was already sixty-seven years of age. He held what one of the best-informed observers of national administration calls "the meanest job in the entire government, so far as my knowledge goes." He had been attacked from three sources: by conservative critics who thought that he was too dependent on the routine of the bureau to furnish driving force for a needed reorganization; by the militant advocates of Indian rights; and by Oklahoma politicians who were angered especially by failure to secure a desired appointment in connection with the position of superintendent of the five civilized tribes. In such situations the appointment of a sympathetic outsider may be wholesome. On April 16 the post was given to Charles J. Rhoads, member of the Philadelphia banking firm of Brown Brothers. Descended from the public-spirited Quaker breed, he had traditions of Indian service, for his father was president of the Indian Rights Association for nine years and Mr. Rhoads himself has been its treasurer for twenty-eight years and recently its president.

In choosing a successor to Winfield Scott, whose resignation as commissioner of pensions was accepted, Secretary Wilbur said that an endeavor was being made "to secure a man who is familiar with actuarial insurance and allied problems." On April 22, Earl D. Church of Connecticut, having such experience, was named commissioner.

Of the other resignations of the presidentially appointed bureau

chiefs, most, if not all, have been returned with the indication that no change is contemplated. Nevertheless the practice of conventional resignations at the beginning of each new administration is undesirable so far as it concerns chiefs of bureaus. The few that are accepted are in effect forced. It would encourage useful traditions of stability in the civil service to abandon the custom.¹³

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¹³ Three recent vacancies in bureau-chiefships have nothing to do with the blanket resignations. In April, David H. Blair, commissioner of internal revenue, announced that he proposed to retire; it has been known for some time that he desired to withdraw on grounds of health. On April 19, Julius Klein, director of the Bureau of Foreign and Domestic Commerce, was named Assistant Secretary of Commerce. William Spry, commissioner of the General Land Office, died on April 22. No fundamental change in the type of commissioner of the Land Office is indicated in the nomination, on May 2, of Charles C. Moore, Governor of Idaho from 1923 to 1927.

LEGISLATIVE NOTES AND REVIEWS

EDITED BY CLYDE L. KING

University of Pennsylvania

State Constitutional Development Through Amendment in 1928.

A greater number of states adopted constitutional amendments in 1928 than in 1927, the proportion being eighteen to seven. The balance between eastern and western states is preserved, there being no apparent difference in the need for amendments between the older and the newer states of the country. For convenience in associating the changes with constitutional provisions previously in force, they are herein treated by states rather than by subject matter. Also, the effect of the amendment upon the earlier section of the constitution is indicated where it is not apparent from the nature of the amendment.

West of the Mississippi River, Idaho leads in the number of amendments, having approved seven. The governor, secretary of state, auditor, treasurer, attorney-general, and superintendent of public instruction are to be paid monthly hereafter instead of quarterly (Art. iv, Sect. 19)¹ and hold office for four years instead of two (Art. iv, Sect. 1).² All county officers also receive their compensation monthly instead of quarterly (Art. xviii, Sect. 7).³ The compensation of the prosecuting attorneys is hereafter to be fixed by law (Art. v, Sect. 18).⁴ Authorization for the loan of permanent educational funds is extended to county, city, and village bonds (Art. ix, Sect. 11).⁵ The collection of all taxes is placed in the hands of specifically designated officers (Art. xviii, Sect. 16).⁶ The right of the state to regulate and limit the use of water for power purposes is affirmed (Art. xv, Sect. 3).⁷

Texas accepted four amendments. One exempts from taxation any property owned by a church or a strictly religious society for exclusive use as a dwelling place for the minister and which yields no revenue. This exemption is extended to property which is used

¹ Yes, 71,209; No, 32,377.

⁵ Yes, 48,594; No, 41,970.

² Yes, 52,059; No, 48,497.

⁶ Yes, 59,467; No, 32,688.

³ Yes, 74,762; No, 28,618.

⁷ Yes, 56,624; No, 38,001.

⁴ Yes, 62,689; No, 33,438.

exclusively and is reasonably necessary for conducting any association engaged in promoting the religious, educational, and physical development of boys, girls, young men, or young women (Art. VIII, Sect. 2).⁸ Another permits the legislature to grant such money as may be deemed expedient to Confederate soldiers and sailors and to their widows, to disabled soldiers who were engaged in protecting the Mexican frontier, and to the widows thereof; and for the purpose of creating a special pension fund a state ad valorem property tax of seven cents per \$100 valuation is authorized (Art. III, Sect. 51).⁹ The legislature is empowered to fix the terms of all public school officials, including those of state institutions of higher learning, and the terms of members of the respective boards, not to exceed six years (Art. VII, Sect. 16);¹⁰ and a state board of education is created (Art. VII, Sect. 8).¹¹

Arkansas also adopted four amendments to its constitution. Certain salaries were fixed, payable monthly: governor, \$6,000; attorney-general, \$5,000; secretary of state, treasurer, and auditor, \$4,000; and circuit court judges and chancellors, \$3,600. The salary of members of the General Assembly is \$1,000 for two years, except that the Speaker of the House of Representatives receives \$1,100. In addition, all members of the General Assembly receive a mileage allowance of five cents for all sessions, and six dollars per day for special sessions (Art. XIX, Sect. 11).¹² In all jury trials and civil cases a concurrent verdict of nine of the twelve jurors is permitted (Art. II, Sect. 7).¹³ County jails or court houses may be built if approved by a majority of the electors voting thereon, the cost to be defrayed by a tax levy not to exceed one-half of one per cent.¹⁴ Voters in cities of the first class which are located in counties of not less than 105,000 population, may vote a special tax to secure the location and to encourage the operation of factories, industries, and river transportation therein.¹⁵

Louisiana, bisected by the arbitrary line of demarcation selected for this survey, kept company with the neighboring states of Texas and Arkansas by the favorable consideration of four amendments: one donating to the United States certain real estate for a Veterans' Hospital;¹⁶ a second authorizing the board of levee commissioners of

⁸ Yes, 205,398; No, 136,970.

⁹ Yes, 248,581; No, 104,773.

¹⁰ Yes, 192,660; No, 133,252.

¹¹ Yes, 185,423; No, 126,134.

¹² Yes, 94,528; No, 56,042.

¹³ Yes, 101,890; No, 52,147.

¹⁴ Yes, 98,649; No, 51,120.

¹⁵ Yes, 99,649; No, 51,120.

¹⁶ Yes, 61,541; No, 40,446.

the New Orleans Levee District to finance reparation claims resulting from the diversion of flood waters in certain parishes;¹⁷ a third permitting New Orleans to issue \$9,000,000 in bonds for constructing and extending sewerage, water, and drainage systems;¹⁸ and the fourth authorizing the legislature to postpone the payment of taxes in cases of calamity, meeting deficiencies in funds by bond issues or other measures (Art. x, Sect. 11).¹⁹

Kansas adopted two amendments, one permitting construction and maintenance of a state system of highways (Art. xi, Sect. 8),²⁰ and the other permitting the levy of special taxes on motor vehicles and motor fuels, the proceeds to be used for highway purposes (Art. ii, Sect. 9).²¹ Missouri took steps to improve her highways by authorizing an additional bond issue of \$75,000,000 therefor (Art. iv, Sect. 44a).²² The people of Nebraska transferred jurisdiction over the Nebraska School for the Deaf and the Nebraska School for the Blind from boards of control to the Board of Regents of the State University (Art. iv, Sect. 19).²³

A change was made in Sect. 179 of Art. xi of the fundamental law of North Dakota which deals with assessment of taxable property by the State Board of Equalization. The property of any person, firm or corporation used for the purpose of producing electric light, heat, or power, or the distributing of the same for public use, and the property of any other corporation, firm, or individual now or hereafter operating in the state and used directly or indirectly in the carrying of persons, property, or messages is now appended to the former list embracing express, freight line, dining car, sleeping car, car equipment, or private car line companies, and telegraph or telephone companies.²⁴

A change was made in the local government system of Montana by dividing each county into three commissioner districts, the commissioners being elected for two, four, and six years respectively. At the conclusion of the initial term of each commissioner, biennial elections are to be held to fill the post (Art. xvi, Sect. 4).²⁵ Colorado has provided for legislative determination of the salaries of the governor, governor's secretary, and the judges of the supreme and district

¹⁷ Yes, 55,419; No, 6,480.

¹⁸ Yes, 51,729; No, 6,255.

¹⁹ Yes, 57,285; No, 5,207.

²⁰ Yes, 493,989; No, 117,596.

²¹ Yes, 444,806; No, 136,719.

²² Yes, 670,279; No, 503,861.

²³ Yes, 240,995; No, 185,410.

²⁴ Yes, 63,568; No, 37,284.

²⁵ Yes, 97,752; No, 64,079.

courts, with the limitation that no law shall extend the term of office or increase or decrease the salary of such officials during their tenure (Art. v, Sect. 30).²⁶ The electors of Arizona approved tax exemptions for widows of honorably discharged soldiers and sailors, and for army nurses.²⁷

In the eastern part of the United States, Virginia approved the largest number of amendments. A general revision of the constitution is planned, excepting certain designated sections (81, 131, 145, 170, and 171), and omitting other sections (128, 148, 149, 150, 161, and 182) of the present constitution.²⁸ Art. XIII, Sect. 171, is changed to exempt from a state property tax for state purposes real estate or tangible personal property, except the rolling stock of public service corporations.²⁹ The governor's power of appointment is extended, for one term, to the filling of the offices of commissioner of agriculture and immigration,³⁰ superintendent of public instruction,³¹ and state treasurer,³² thereby amending Art. x, Sect. 145, Art. ix, Sect. 131, and Art. v, Sect. 81, respectively. After January 1, 1932, the General Assembly may provide the manner in which and the term for which these officials shall be selected.

Pennsylvania ranks second in volume of constitutional amendments, having adopted four. Courts of quarter sessions are given authority to divide or change the boundaries of election districts whenever the court of the proper county shall be of the opinion that the convenience of the electors, and other public interests, will be promoted thereby; and Art. VIII, Sect. 11, is modified so that it is no longer mandatory in cities of over 100,000 population to reconstruct districts containing more than 250 voters.³³ Tax laws may grant exemptions or rebates to residents, or estates of residents, of other states which grant similar rebates to residents, or estates of residents, of Pennsylvania (Art. ix, Sect. 16).³⁴ Voting machines are authorized, but not required, for elections and primaries throughout the commonwealth, at the option of the electors of counties, cities, boroughs, and townships. The General Assembly may prescribe the numbers and duties of election officers of the commonwealth in elections in which voting machines or other mechanical devices are used (Art. VIII,

²⁶ Yes, 134,724; No, 119,060.

²⁷ Yes, 30,208; No, 20,044.

²⁸ Yes, 74,109; No, 60,531.

²⁹ Yes, 69,034; No, 65,176.

³⁰ Yes, 75,160; No, 59,600.

³¹ Yes, 68,756; No, 65,695.

³² Yes, 68,665; No, 65,816.

³³ Yes, 540,613; No, 441,479.

³⁴ Yes, 489,237; No, 403,930.

Sect. 7).³⁵ The consolidation of the county poor districts, cities, boroughs, and townships of the present county of Allegheny is authorized at the discretion of the General Assembly, which may endow the new municipal corporation, to be known as the City of Pittsburgh, with necessary constitutional and legal capacity (Art. xv, Sect. 4).³⁶

Michigan prohibited the division of townships or cities in the formation of representative districts, except that when a city is composed of territory in more than one county, it may be divided at the county line or lines. In the case of cities hereafter organized or created, or territory annexed to existing cities, the territory affected is to remain in its existing representative district until the next apportionment (Art. v, Sect. 3).³⁷ In exercising the powers of eminent domain, and in acquiring property needed for the opening and widening of boulevards, streets, and alleys, municipalities shall not be limited to the acquisition of the land to be covered by the proposed improvement, but may take such other land and property adjacent thereto as may be appropriate to secure the greatest degree of advantage from public improvement. After the completion of the public enterprise, land found to be unnecessary may be sold or leased with or without restrictions. Such projects may be financed by bond issues; but such bonds are a lien only on the property so acquired, and may not be included in any limitations of the bonded indebtedness of the municipality (Art. XIII, Sect. 5).³⁸ The compensation of members of the legislature is fixed at three dollars a day during the term for which they are elected, instead of \$800 per session as previously. The compensation provided in Art. v, Sect. 9, for extra sessions remains unchanged (Art. v, Sect. 9).³⁹

In Rhode Island, provision is made for biennial registration for voting, the first registration period commencing on the first day of June, 1928, and ending on the last day of June, 1930 (Amendment XI, Sect. 11).⁴⁰ An additional senator is provided for any town or city having more than 25,000 qualified electors. For each 25,000 qualified electors or fraction exceeding half thereof, one additional senator is authorized, with the limitation that no town or city shall be entitled to more than six senators (Art. VI, Sect. 1).⁴¹ Every citizen of the United States of the age of twenty-one years, who has had his residence

³⁵ Yes, 745,711; No, 348,328.

³⁹ Yes, 441,114; No, 417,419.

³⁶ Yes, 472,291; No, 433,677.

⁴⁰ Yes, 70,902; No, 13,546.

³⁷ Yes, 523,127; No, 386,673.

⁴¹ Yes, 63,202; No, 19,754.

³⁸ Yes, 490,032; No, 412,928.

and home in Rhode Island for two years, and in the town or city in which he may offer to vote for six months immediately preceding the election, has a right to vote in the election of all civil officers and on all questions presented in town or ward meetings if he or she registers before or on the last day of June. If the General Assembly vests authority to impose taxes and to spend money in any town or city in a budget commission, such commission shall consist of not less than five nor more than fifteen electors (Amendment VII, Sect. 1).⁴² These three amendments are numbered consecutively 18, 19, and 20, and are appended to the constitution.

The electors of North Carolina also changed the basis of pay of members of the General Assembly, substituting a fixed sum or \$600 per session for four dollars per diem. Additional compensation is provided for extra sessions. Presiding officers are allowed \$700 per session instead of six dollars per day, with additional compensation for extra sessions (Art. II, Sect. 28).⁴³

The legislature of Alabama is authorized to form, or provide for the formation of, drainage districts for establishing and maintaining drainage systems, assessing all or part of the cost thereof against the lands and properties in such districts to the extent of their increased value by reason of special benefits derived from such improvements. Financing through bond issues may be undertaken with or without an election. This amendment is retroactive and retrospective.⁴⁴

The restrictions upon the passage of local or special legislation in Florida (Art. III, Sect. 21) have been changed by reducing the time of prior publication thereof from sixty days to thirty days, and by requiring affidavit of proof of publication attached to the proposed bill when the same is introduced in either branch of the legislature. This affidavit must be entered in full upon the journals of both houses immediately following the journal entry showing the introduction of the bill. Publication is not required when local or special laws contain a provision to the effect that they shall not become operative or effective until ratified or approved by a majority of the qualified electors participating in an election in the territory affected.⁴⁵

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⁴² Yes, 62,263; No, 20,107.

⁴⁴ Yes, 41,564; No, 41,216.

⁴³ Yes, 147,946; No, 147,734.

⁴⁵ Yes, 41,629; No, 31,487.

Governors' Messages, 1929.¹ One could occupy one's self for a considerable time in attempting to work out a classification of governors' messages, but it is doubtful whether the effort would be well spent. There are wide differences among messages. Through one hundred sixty dull pages, Governor Small recounts the operations of the government of Illinois, offering much such material as: "Other improvements made at a cost of \$18,490.00 are: Three frame dormitories to house fifty inmates each. Two barns. One root cellar. Garage. Additions to dining room and kitchen." Granting that such information is worth something as an indication of the details of state government and the concrete objects of expenditure, one may be permitted to question its inclusion in a governor's message as too literal an observance of a customary constitutional requirement. Governor Ritchie somewhat more moderately spreads a description of Maryland's government over ninety-eight pages. The *Baltimore Sun* thinks that he was stirred to this prolonged narrative of nine years' achievement by the recent disclosure of gross irregularities in road-building operations, and of lesser official and political mishaps. The governor considers that Maryland has all the law and machinery

¹ The governors' messages from all states in which the legislature meets regularly this year are reviewed, with the exception of Florida and Georgia, where the legislative sessions do not begin until April and June respectively. Not all retiring governors' messages have been secured. The messages of the following governors are included in the review: Harvey Parnell of Arkansas, John C. Phillips of Arizona, C. C. Young of California, William H. Adams of Colorado, John H. Trumbull of Connecticut, C. Douglass Buck of Delaware, H. C. Baldrige of Idaho, Len Small (retiring) and Louis L. Emmerson of Illinois, Ed Jackson (retiring) and Harry G. Leslie of Indiana, John Hammill of Iowa, Clyde M. Reed of Kansas, William T. Gardiner of Maine, Albert C. Ritchie of Maryland, Frank C. Allen of Massachusetts, Fred W. Green of Michigan, Theodore Christianson of Minnesota, Sam A. Baker (retiring) and Henry Caulfield of Missouri, J. E. Erickson of Montana, Arthur J. Weaver of Nebraska, F. B. Balzar of Nevada, Huntley N. Spaulding (retiring) and Charles W. Tobey of New Hampshire, Harry Moore (retiring) and Morgan F. Larson of New Jersey, Richard C. Dillon of New Mexico, Franklin D. Roosevelt of New York, O. Max Gardner of North Carolina, George F. Shafer of North Dakota, Myers Y. Cooper of Ohio, Henry S. Johnston of Oklahoma, I. L. Patterson of Oregon, John S. Fisher of Pennsylvania, Norman S. Case of Rhode Island, John G. Richards of South Carolina, W. J. Bulow of South Dakota, Henry H. Horton of Tennessee, Dan Moody of Texas, George H. Dern of Utah, John E. Weeks of Vermont, Roland H. Hartley of Washington, Howard M. Gore (retiring) and William G. Conley of West Virginia, Walter J. Kohler of Wisconsin, and Frank C. Emerson of Wyoming.

that it needs, and that the test now turns on administration. One hundred and fifteen pages contain Governor Young's account of the organization and working of California's state government, written perhaps more readably than either of the other two and describing a complexity of structure and a ramification of activity that would move Thomas Jefferson to tears. At the other end of the scale appears Governor Dillon's inaugural of one page and message of three, almost equalled in brevity by Governor Leslie's seven and eight pages respectively in Indiana and Governor Roosevelt's eight and ten in the Empire State. Hardly a message shows the spirit and fire of leadership; several are prosy, routine, matter of fact, far from incisive, or even certain or positive, in tone; many, however, are probably fair examples of state executive performance. The executives in thirteen of the forty-one states covered are Democrats; the others are Republicans. It would be amusing, if not instructive, to try the ability of the members of the parties' national committees to select, let us say, the Democratic messages, in a "blindfold" test.

The following paragraphs are designed, not to present a synopsis of the two score messages reviewed, but only to call attention to unusual or significant comments and recommendations, and to give some indication of trends or tendencies.

Machinery of State Government. Administrative reorganization is stressed in a number of messages. Governor Young wishes to continue the California reorganization by combining some thirty-eight agencies and bureaus into three or four groups. The governors of Texas, West Virginia, and Wisconsin wish their states to fall into line by adopting the short ballot and a complete reorganization, with the governor as the apex of the system. The governors of Connecticut and Michigan praise their new budget systems, and those of Missouri, Wisconsin, and West Virginia stress the need for the adoption of a budget plan in their states, Governor Caulfield (Mo.) also recommending that, so far as possible, all appropriations be made in lump sums. The last three join with Governor Buck of Delaware in advocating centralized purchasing, and in Maryland, Montana, and New Hampshire the need for centralized accounting, or other means of more rigid fiscal control, is stressed. Governor Balzar of Nevada asks for a yearly inventory of all state property.

Governor Roosevelt (N. Y.) advocates the re-submission of ex-Governor Smith's proposal for a four-year term for governor, insisting, as did Smith, that the election take place in the middle of the national

quadrennium. Governor Shafer of North Dakota asks for four-year terms for all state and county officers, and even longer terms for judges of the supreme court. The governors of Connecticut and Utah ask to be relieved from service on various state boards, in order to be free to devote all of their time to their other duties.

Nebraska is out of step with the general trend. The civil administrative code, the work of a Democratic administration, attempted to make the governor the real head of the administration without waiting for the amendment of the constitution. Governor Weaver advocates that the "code" offices be abolished and their functions returned to the constitutional officers. He has a good word to say, however, for the short ballot, but adds that "we do not have this system in Nebraska."

As usual, legislative organization and the technique of law-making come in for much less attention. Governor Richards of South Carolina once more advocates the substitution of biennial for annual sessions, repeating such standard arguments as the "uncertainty of legislative policy" not being conducive to business stability or confidence. Governor Kohler favors an increase in the salary of Wisconsin legislators. Governor Dern believes that Utah should join the ranks of the states providing expert assistance for their law-makers through a legislative reference bureau. He also feels that the legislature should pay more conscious tribute to the present-day legislative functions of administrative agencies by putting fewer details in the statutes, leaving them to be filled out by administrative regulations.

Governor Young advocates that all bills be prepared and printed in advance of the opening of the legislature, which would enable the first half of the California bifurcated session to be limited to about two weeks. Governor Adams states that the quality of Colorado statutes would be improved if the period of time allowed the governor to examine bills before signing them were increased.

Local Government. County government requires overhauling, at least in the minds of the governors of California, Iowa, Minnesota, Missouri, and New York. Governor Young recommends a greater degree of home rule for California counties, and Governor Green of Michigan favors city-county consolidation and the consolidation of sparsely settled counties.

Elections. The direct primary is defended by the governors of North Carolina and Utah, and Governor Reed recommends that Kansas adopt the presidential primary. On the other hand, Governor Leslie advocates that Indiana return to the convention system for

all nominations. Governor Dern favors abolishing the use of the party emblem on the Utah ballot, and of all party designations in the case of judicial offices. New Mexico is advised to have entirely separate elections for judges. Governors Dern and Roosevelt advocate that state and national elections be separated so far as practicable. Permanent registration of voters is proposed for Missouri and Ohio, and the Empire State is advised to adopt the popular initiative and popular ratification of proposed amendments to the federal Constitution.

Corrupt practices legislation comes in for considerable attention. Governor Weaver of Nebraska asks that all candidates be required to file statements of expenditures. Governor Roosevelt advocates a limit on expenditures, and publicity before as well as after the election, and Governor Dern asks that the Utah law be strengthened in several particulars. Governor Kohler asks that all Wisconsin elections since 1924 be investigated to discover violations of law. Press comments have it that these are, indeed, to be found in the governor's own campaign.

Courts, Law Enforcement, Prison Administration. Governor Roosevelt demands that the New York legislature "simplify and cheapen justice," which he terms "our most expensive commodity." Governors Hammill of Iowa and Caulfield of Missouri stress the need for modernizing our archaic criminal procedure. The former also pays tribute to the Baumes law, and Governor Weaver asks for its consideration by the Nebraska legislature. The California governor's statements are of quite a different nature, stressing the benefits that have accrued from the work of the judicial council and the mobility of judges. Seven governors stress the need for greater effort in enforcing prohibition, and Governor Dillon recommends that New Mexico adopt a more effective enforcement statute.

Governor Trumbull (Conn.) recommends that the work of the state's attorneys be centralized under the attorney-general. Governors Christianson (Minn.) and Caulfield (Mo.) ask for at least a degree of control over local enforcement officers, preferably the power of removing derelict officials from office. Governor Moody of Texas takes occasion to point out the defects of the fee system, which he thinks might well be abolished.

Several governors make recommendations as to the use of prison labor. Governor Ritchie (Md.) fears that the federal law prohibiting interstate commerce in prison labor products will entail difficulties in the employment of Maryland prisoners.

Taxation and Finance. The trend in taxation is definitely away from the property tax. Governors Reed of Kansas and Parnell of Arkansas suggest the abolition of the state property tax. Governor Baldrige suggests that the Idaho property tax be reduced, and Roosevelt in New York, Weaver in Nebraska, and Conley in West Virginia advise that the tax burden of the farmer be reduced. Governor Fisher recommends the repeal of the Pennsylvania tax on anthracite coal, which was originally adopted on the theory that the burden falls primarily on consumers in other states.

Further use of the income tax is commended highly in several states. Governor Green asks for an amendment to the Michigan constitution authorizing a temporary income tax to finance a building plan, and Governor Gore wants a similar amendment in West Virginia making the income tax a permanent feature. Governor Kohler thinks that the rate in Wisconsin should be reduced on moderate incomes. Governor Young (Cal.) considers that an income tax on corporations should replace the bank shares tax and the corporate franchise tax.

Few new sources of revenue are recommended. Governor Christianson of Minnesota feels that the states should be allowed to tax federal bonds and national banks. Governor Baldrige of Idaho suggests new taxes on the automobile, whereas Governor Dillon feels that the automobile is overtaxed, and should be exempted from the New Mexico property tax. Although it is Governor Bulow's opinion that a graduated income tax is most equitable, he advises an immediate redistribution of the tax burden in South Dakota by means of luxury, amusement, occupational, and sales taxes.

In their attempts to arrive at a rate base that will meet the requirements of recent Supreme Court decisions and still do justice to the public as well as to industry, our utility commissions have adopted quite different tests of "value" from those used by our assessors and boards of equalization. Governor Johnston of Oklahoma recommends that the rate base should also serve as the valuation of a public utility for purposes of taxation.

Several governors recommend the creation of a state tax commission; whereas from South Carolina comes Governor Richards' plea that the existing commission, having "developed into the greatest political machine ever connected with our state government," be abolished.

Highways. The car owner is being asked to pay more and more. Both retiring and incoming governors propose a gasoline tax in Illinois, one of the two remaining states not yet receiving revenue from

this source.² Increases of one or two cents a gallon in the gasoline tax are specifically recommended in Indiana, Kansas, Minnesota, Montana, Nebraska, North Carolina, North Dakota, and Tennessee, and are hinted at in Pennsylvania. The governors of Maine, New Hampshire, Oklahoma, Texas, and Wyoming favor bond issues for road purposes, and Governor Christianson recommends that Minnesota refund the \$33,000,000 county debt assumed by the state.

A redistribution of highway costs is favored in several states. Governor Roosevelt feels that the present distribution in New York falls inequitably upon the less prosperous rural communities and favors its apportionment upon the basis of the actual relative wealth of each community. In Pennsylvania and North Dakota more state aid to local units is suggested. Relief of localities from all or part of the maintenance cost is favored in New Hampshire, New York, and North Carolina, and Governor Cooper feels that Ohio should pay all of the bill for state highways, discontinuing the assessment of part of it upon adjacent property owners. The governors of Arkansas, Illinois, Iowa, Kansas, Nebraska, New Jersey, North Dakota, Ohio, and Wyoming recommend the construction or improvement of a secondary highway system of "feeder" roads, which should prove of great benefit to the farmer.

In Connecticut, Massachusetts, and Michigan the reëxamination of car owners at regular intervals is proposed, and the Illinois, Idaho, Nevada, and Tennessee governors advise the licensing of operators. In Connecticut and Iowa the need of uniformity in traffic rules is stressed.

Conservation, Power Development, Utilities. The legislatures in Connecticut, Indiana, Maine, Minnesota, Missouri, New Jersey, Ohio, Oklahoma, Oregon, New Hampshire, Pennsylvania, Vermont, West Virginia, and Wisconsin are asked to consider one or more of the following activities: purchase of lands by the state for parks or reforestation with popular recreation, timber culture, or regulation of stream flow in view; protection of forests from fire, tree diseases, and pests; prevention of stream or shore pollution; propagation of wild life.

"The title and constant control of power generated at the sources must remain indefinitely in the people and not be alienated by long-time leases," is sufficient to express Governor Roosevelt's attitude on power development. Governor Dern would have Utah follow a similar

² A three cent tax has since been adopted.

policy. Governors Christianson (Minn.) and Gore (W. Va.) warn their legislatures of the need for recapture provisions in all leases or sales of power sites.

Governor Moody (Tex.) seems to be the only executive to refer specifically to the Federal Trade Commission's utility investigation. He finds that there is practically no effective regulation of the gas utilities in Texas, and he asks for legislation whereby the reductions in the cost of utility products will accrue to the public in rate decreases. Governor Kohler stresses the apprehension as to Wisconsin's lack of friendly feeling toward industry, and warns that government competition with business is "unfair, tends to socialism, and means more and higher taxes."

Education. The outstanding recommendations in the field of education deal with the inequality of educational opportunity as between urban and rural areas, and the inequitable distribution of the financial burden for school support. Increased state subsidies, consolidation of schools, and enlargement of the unit of administration are common suggestions in Arkansas, Arizona, Michigan, Missouri, New York, North Carolina, Oklahoma, Rhode Island, Texas, Vermont, West Virginia, and Wisconsin. Governor Bulow feels that public education in South Dakota is too expensive. Governor Caulfield recommends improved educational facilities, including a real university for the Missouri negro.

Labor. Curtailment of the abuses of the injunction in labor disputes is urged in Massachusetts, Nebraska, and New York. The enactment of workmen's compensation laws is urged in New Mexico and North Carolina, and the improvement of such laws is felt necessary in Iowa, Michigan, Montana, and Nebraska. Governor Young reports that the California experience conclusively shows that the claims of the opponents of the minimum wage law were not founded on fact, and Governor Roosevelt recommends the passage of such a law in New York. The latter also favors a real eight-hour day and forty-eight hour week, and the study of old age pensions. Governor Reed feels that it is not too late for Kansas to ratify the child labor amendment.

Governors Allen (Mass.), Buck (Del.), and Kohler (Wis.) desire public construction to be planned for times of depression, and suggest the collection of the necessary statistics on unemployment.

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Labor Legislation in 1928. Inasmuch as only nine states and two insular possessions held regular legislative sessions during 1928, the year's development of labor legislation was comparatively lean. Despite this, some laws of importance were enacted, particularly in the field of social insurance. Workmen's compensation, vocational rehabilitation, and old age pensions each shared in the general growth and expansion, to the ultimate advantage of both employer and employee. Too often labor legislation is thought of only as a benefit to the worker, whereas in many cases the status of the employer is also improved, and, finally, the community is relieved of an unwelcome charity burden.

Workmen's Compensation. Workmen's accident compensation was the first form of social insurance to be introduced widely in America, developing suddenly out of the far less effective system of employers' liability whereby the injured employee attempted to recover his losses by suing his employer. Such a procedure was apt to be highly expensive for the worker and the employer, since both were obliged to pay lawyers' fees, and, in addition, the employer ran the very possible risk of losing the suit and incurring heavy damages. The advantages of workmen's compensation over this system are manifold. The number of accidents tends to be lessened, because insurance costs are lower in the long run for firms which are equipped with satisfactory safety devices and appliances. Neither the employer nor the injured employee need alone bear the burden of the accident as formerly, but rather the expense is distributed evenly over the general consumers. Although in sections of Europe workmen's accident compensation was early put into practice, it was as late as 1911 that the first permanent American state compensation act went into effect, in New Jersey. During the following ten years the system spread rapidly throughout the United States.

Among the most important measures enacted during 1928 in the field of workmen's compensation was that of the District of Columbia. In 1927 Congress passed the Longshoremen's and Harbor Workers' Compensation Act, thereby bringing under compensation protection a third of a million men engaged in dangerous harbor work. In 1928 Congress put through an extension of this law relative to the District of Columbia, providing that the same compensation benefits should apply to all private employees in the District of Columbia, excluding seamen, railway employees in interstate commerce, and employees in agriculture, domestic service, and casual employment. Important

provisions include a seven-day waiting period, all necessary medical care, the compensation of all occupational diseases, a two-thirds wage scale, and a \$25 weekly maximum, with a limit of \$7,500 on the total amount.

Several supplementary compensation measures enacted during the past year were of interest, especially that of Porto Rico. The earlier law was repealed and in modified form reenacted. The usual provisions were made; for the act is compulsory and applies to all employees except domestic servants and casual workers. Employees of the government and municipalities, except clerks, are covered. All necessary medical care and a seven-day waiting period are provided. The act is administered by an industrial commission of three members created in the department of agriculture and labor. New York's compensation act was also supplemented, mainly in respect to the extension of compulsory coverage to all employments in which four or more workmen are engaged. Meanwhile in New Jersey the weekly maximum compensation was raised from seventeen dollars to twenty and the minimum from eight dollars to ten. Only five states (North and South Carolina, Arkansas, Florida, and Mississippi) remain at present without workmen's accident compensation laws.

Vocational Rehabilitation. Another important branch of social insurance is vocational rehabilitation, which attempts, by means of medical and educational assistance, to reinstate the crippled workman in his own or some other form of productive employment. The advantages of such a procedure for the employee are self-evident, to say nothing of the benefits accruing to the employer, who no longer is required to pay out large sums of money to his disabled workmen; for, as in the case of accident compensation, here also the burden of rehabilitation is shared by the general consumers. The community as a whole may find this process temporarily expensive, but eventually the expenditure is amply justified, for it is far more economical for a community to aid temporarily an incapacitated member than to support him and his dependents permanently as public charges. Vocational rehabilitation was introduced late, and it was not until 1920, when the federal-state plan was adopted by Congress, that the development throughout the country became extensive. The year 1928 saw the enactment of relatively few measures of importance in this field, though in New Jersey an act of some interest was concerned with the redefining of a "physically handicapped" person as some one incapacitated for education as well as for remunerative occupation. This includes all

persons, instead of, as formerly, only those over sixteen years of age. Seven laggard states still neglect the important possibilities of federal-state coöperation in rehabilitation work. They are Connecticut, Delaware, Kansas, Maryland, Texas, Vermont, and Washington.

Old Age Pensions. Old age pensions for private employees, a sadly neglected thing in the United States, have at present been introduced as a public policy in only six states (Montana, Nevada, Colorado, Kentucky, Wisconsin, and Maryland) and in Alaska. Even more shocking are the international statistics which group the United States, China, and India as the only three heavily populated countries remaining without this important form of social insurance. There are, of course, alternatives to the pension system, such as charity in the shape of institutional care, a procedure often disagreeable to the aged and burdensome for the community.

During 1928 a public bequest commission was organized in Massachusetts. A public bequest fund consisting of bequests and gifts to the fund was established and put under the commission's control. When the fund's principal amounts to \$500,000, the commission, with the governor's and council's approval, may distribute the fund's income to needy and worthy women sixty years of age and over and to men sixty-five and over. New York State, in 1926, enacted a law authorizing a joint legislative committee to investigate the condition of the aged poor, with the ultimate purpose of devising a state policy and recommending legislation for carrying the same into effect. The appropriation was \$5,000, which was repeated in 1927. A new law was put into effect in 1928 allowing the joint legislative committee to continue its study until March 1, 1929, with a doubled appropriation. Likewise the state commissioner of finance in Rhode Island was directed to investigate the general subject of old age dependency and the various state old age pension systems with a view to their practical adaptability in Rhode Island. As regards pensions for public employees, Kentucky established a state teachers' retirement system, to be administered by the state board of education. Funds are to include monies provided by the state, two and one-half per cent of the members' salaries, and an equal contribution by their employers. Specific and minor laws relating to teachers' pensions were enacted in Mississippi, New Jersey, and Vermont.

Employment. The important legislative developments in the field of employment during the past year were mostly concerned with the question of private employment offices. Special interest in this

subject resulted partly from the Ribnik case in New Jersey, May 28, 1928 (Ribnik v. McBride, 48 Sup. Ct. 545), which arose over the refusal of Commissioner McBride of the New Jersey department of labor to grant a license for a private employment office, on the ground that the fees proposed to be charged were excessive. The U. S. Supreme Court judged this procedure unconstitutional inasmuch as such action conferred "upon the commissioner of labor the power to fix the prices which the employment agent shall charge for his services." Following this, New Jersey made several amendments to the law regulating private employment agencies, stating that the furnishing of food, supplies, tools, or shelter to laborers in connection with the promise or offer to provide employment or help violates this act. In addition, all violations of the established provisions regarding licenses and advertisements are to be punished by fine or imprisonment. If after due investigation it appears that additional agencies are not needed, licenses may be withheld. Applicants for licenses, in addition to existing requirements, including proof of good moral character, must furnish proof of citizenship in the United States. In Louisiana the commissioner of labor was authorized to supervise the work of labor agents and employment bureaus, and to levy on them an annual tax of \$500. An important act of the United States as regards employment legislation directed the Secretary of Labor to investigate, compute, and report to the Senate the extent of unemployment, and also the method whereby frequent periodic reports and permanent statistics of unemployment may be made.

Safety and Health. Decidedly to the advantage of the employer is the satisfactory protection of the health and safety of his workmen, for it is more or less inevitable that men working under sanitary and safe conditions are able to do higher grade work than those employed in dirty, poorly-ventilated workrooms. Various safety measures were put into effect throughout the country during 1928, such as that of Kentucky regulating polishing and grinding machinery with an eye to protecting the worker. Of more interest were the safety regulations enacted in reference to mining. The Kentucky law was repealed and reenacted, now providing that only competent engineers may be in charge of engines used for lowering employees into or hoisting them out of coal mines. At the same time Congress enacted a law directing the Senate committee on interstate commerce to investigate conditions in the coal fields of Pennsylvania, West Virginia, and Ohio, especially in regard to injunctions issued, eviction of miners and families from their homes, and abrogation of wage contracts.

Child Labor. Legislation relating to child labor made some progress during the year, particularly in the District of Columbia, where a law was enacted providing for the exclusion of children under fourteen from gainful occupations and regulating the hours and working conditions of minors. Similarly, New York prohibited children under fourteen from working in any trade, business, or occupation carried on for pecuniary gain, and Rhode Island also regulated the hours and the types of employment for minors.

Mechanics' Liens. The so-called mechanics' lien laws aim to protect the worker by permitting him to sue for his wages against the value of the building or land on which he is employed. In 1928 Louisiana extended the mechanics' lien to well-workers and those employed in building, street, railroad, and ditch labor. New Jersey authorized the appointment of a joint commission to revise the present mechanics' lien law; while Mississippi, New York, South Carolina, and Virginia adopted amendments to existing laws.

Administration. In the field of administrative legislation several measures were introduced, such as the abolition of the Kentucky child welfare commission. In its place a children's bureau was created, the functions of which include the supervision and control of the administration of mothers' aid and the investigation of the needs of Kentucky children. In New York the penal law was amended to include among misdemeanors a violation of or non-compliance with any rule, regulation, or order of the Department of Labor; and the Industrial Survey Commission, organized in 1916, was continued until March 1, 1929, with an additional appropriation of \$30,000.

This brief survey of the labor legislation of 1928 has concerned itself only with the most important laws. Certain highly specific and minor measures have been omitted as of insufficient general interest. It is evident, even from this brief discussion, that the main trend of 1928 labor legislation was in the direction of extending and liberalizing social insurance and strengthening public control of private employment agencies.

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Recent Radio Legislation. International. The most important recent international radio legislation is the International Radiotelegraph Convention and the General and Supplementary Regulations

attached thereto, which became effective January 1, 1929.¹ By March 1, 1929, ratifications had been deposited in the Department of State on behalf of twenty-five administrations.

Article 5 of the General Regulations provides an allocation of frequencies among services. Countries whose radio services might interfere with each other were expected to apportion among themselves the frequencies allocated to various services. On January 21, 1929, a conference composed of delegates of the United States, Canada, Newfoundland, and Cuba met in Ottawa to discuss the allocation of radio channels on the North American continent. Mexico was invited, but declined to send delegates. The basis upon which the delegations arrived at a conclusion was that all nations have a right to the use of every radio channel, but that special arrangements are essential to minimize interference. A radio frequency standard was provided for and the percentage of permitted variation therefrom for various types of stations established.

Altogether, 639 separate channels were allocated among services. By taking advantage of the fact that certain frequencies do not normally cause interference at great distance, it was possible to assign a grand total of 704 channels. Of these, 190 were devoted to the mobile services, 134 to amateurs, 84 to experimental visual broadcasting, 3 to experimental purposes, and 228 to general communication services. As a result of the assignment of the general communication channels, the United States obtained 112 channels for exclusive use and 34 shared with other countries, Canada 38 exclusive (except shared with Newfoundland) and 48 shared, Newfoundland 17 shared, Cuba 5 exclusive and 15 shared, and other nations 8 exclusive and 16 shared.

The agreement went into effect March 1, 1929, and is to remain in force until January 1, 1932, and thereafter for an indeterminate period and until one year from the day on which a denunciation thereof shall have been made by any one of the contracting parties.² A European conference for similar purposes has been called to meet at Prague from April 4 to April 13, 1929. The principal subject to be discussed is the allocation of frequencies for European broadcasting and for communication purposes.³

¹ For a brief discussion of these documents and the conference which drafted them, see "The International Radiotelegraph Conference of Washington," *American Journal of International Law*, vol. 22, p. 28 (January, 1928).

² State Department press release, February 28, 1929.

³ State Department press release, January 15, 1929.

On January 12, 1929, the United States and Canada reached an agreement, effective as of January 1, 1929, regarding types of messages between the two countries which might be handled by amateurs. The arrangement permits private experimental stations to handle messages which would not normally be sent by any existing means of electrical communication (tolls may not be charged), messages from radio stations in isolated points not connected by any regular means of electrical communication, and messages originating in emergencies where the regular electrical communication systems have been interrupted. The arrangement may be terminated by either government on sixty days notice to the other government, or by the enactment of legislation in either country inconsistent with it.⁴

The International Telegraph Conference which met in Brussels from September 10 to September 22, 1928, devoted its entire time to the problem of code language, which is of interest in radio communication as in wire communication. The protocol adopted by the Conference permits the use of ten-letter code words with a stated relationship between vowels and consonants at full rate, and of five-letter code words at a reduced rate. October 1, 1929, was set as the date on which the new regulations are to become effective.⁵

National. The Radio Act of 1927 is the only comprehensive enactment since the development of broadcasting.⁶ Among other things, the act provided for the creation of a Federal Radio Commission composed of five members. The first commissioners were to be appointed for the terms of two, three, four, five, and six years, respectively, from the effective date of the act, and their successors were to be appointed for terms of six years. The commission was given broad power to control the various phases of radio. After one year from the first meeting of the commission, most of its administrative duties were to be vested in and exercised by the Secretary of Commerce, the commission continuing largely as an appellate body. A salary of \$10,000 for the first

⁴ State Department press release, January 18, 1929.

⁵ The protocol and the report of the American delegation to the Conference are contained in a State Department press release of October 18, 1928.

⁶ Public No. 632, 69th Congress. For an excellent discussion of the 1927 and earlier federal legislation relating to radio, see an article by Frederic P. Lee on "Federal Radio Legislation" in *Annals of American Academy of Political and Social Science*, vol. 142, No. 231 Supplement (March, 1929). The same volume contains an interesting article by O. H. Caldwell, a member of the Federal Radio Commission, on "The Administration of Federal Radio Legislation."

year of their service and thereafter compensation at the rate of \$30 per day for each day's attendance upon sessions of the commission, or while engaged upon work of the commission, was provided for each member. The act restricted the term of licenses for the operation of broadcasting stations to three years and for other classes of stations to five years.

An act approved March 28, 1928,⁷ continued in the commission until March 16, 1929 (two years from the date of the first meeting) all the powers and authority vested in it by the original act. The annual salary of \$10,000 was continued for the same period. It was provided, however, that the term of office of all commissioners should expire on February 23, 1929 (two years from the date of approval of the 1927 act), and that thereafter the commissioners should be appointed for terms of two, three, four, five, and six years, respectively, as provided in the 1927 act. The 1928 act provided that prior to January 1, 1930, the licensing authority should grant no license for a broadcasting station for a longer period than three months and for any other class of station for a longer period than one year. The last section of the 1928 act, differing from the temporary nature of the other provisions, embodied the so-called Davis amendment requiring equality of radio broadcasting service among the five zones.

The second session of the Seventieth Congress was requested to continue the original jurisdiction of the commission for another year; and the House passed a bill continuing that jurisdiction until March 16, 1930. A filibuster in the Senate by Senator Copeland during the last days of the session forced the acceptance of December 31, 1929, as the date on which the original jurisdiction of the commission should cease. In this form the measure was signed by the President on March 4. The most important effect of the altered date is that it will force the new Congress to consider the problem of radio legislation earlier than it otherwise would have been obliged to do.

The Copeland amendment did not touch the provision for compensation contained in the House measure; so that the salary of \$10,000 a year is to continue until March 16, 1930. The 1929 measure follows that of 1928 by providing that the terms of the commissioners shall expire on February 23, 1930, and that thereafter the commissioners shall be appointed as provided in the 1927 act. The new law continues until January 1, 1931, the 1928 restriction upon the length of time for

⁷ Public No. 195, 70th Congress.

which station licenses may be granted. The only new provision of the act is that authorizing the commission to pay its general counsel a salary of \$10,000 a year and three assistants to the general counsel \$7,500 each. The Comptroller-General had ruled that the maximum salary that the commission might pay its counsel was \$6,500 a year. Congress thought that the importance and difficulty of the legal questions involved in the regulation of radio warranted the payment of the higher salary.

Another important, though non-controversial, measure relating to radio passed by the second session of the Seventieth Congress (Public No. 793, 70th Congress) was that authorizing the purchase by the Secretary of Commerce of a site, and the construction and equipment of a building thereon, for use as a constant frequency monitoring radio station. A Senate resolution (S. Res. 351) presented and passed on March 2, 1929, paves the way for a new departure in the regulation of radio transmitting stations. It requests the Radio Commission to formulate a schedule of fees to be recommended to Congress as the charges which should be made for the different kinds of radio licenses issued by the commission, and to report the same to the Senate for its consideration in connection with radio legislation at as early a date as convenient.

The most comprehensive radio bill introduced in the second session of the Seventieth Congress died in committee. It was S. 5104 providing for the creation of an independent establishment to be known as the Federal Communications Commission and to have the power to regulate and control the transmission of intelligence by telegraph, telephone, cable, and radio, and of common carriers engaged in such transmission.

State. Until very recently there has been no state legislation worthy of note on the subject of radio. In the radio act of 1927 Congress occupied the field in such a manner that general state legislation on the subject runs the risk of conflicting with the national provisions.⁸

A few states, however, touch some of the incidents of radio in their legislation. Thus the Illinois legislature has defined and provided a punishment for slander over, through, or by means of radio (Laws, 1927, p. 406). Indiana has authorized the state fire marshal to promulgate rules and regulations for the keeping, use, manufacture, sale, etc.,

⁸ The Federal Radio Commission's release number 561, February 20, 1929, contains a digest of state and municipal radio regulations.

of "radio wires and wiring, connections, appliances, and things connected therewith, and radio aerial wires and wiring, and the proper connections, insulation, use and location of the same" (Acts, 1927, c. 115). Pennsylvania has provided that the rental of radio facilities may be included in nomination and election expenses (Laws, 1927, c. 233).

More comprehensive regulations have been adopted by Maine, Michigan, and Nevada. The Maine statute (Laws, 1927, c. 215) prohibits the use of any radio receiving set which radiates radio waves between 200 and 550 meters in length, thereby causing interference with the reception of any other radio receiving set. The act further provides that whoever knowingly, maliciously, or wantonly by any means unreasonably disturbs the reception of radio waves between 200 and 550 meters in length used for radiotelephony shall be subject to a fine.

The Michigan statute (Acts, 1927, c. 131) authorizes the state public utilities commission to make regulations to prohibit interference in radio reception caused by simultaneous broadcasting of two or more radio stations within the state, or where broadcasting originates within the state but the station is located outside thereof. The commission is authorized to prescribe and enforce a time schedule for operation of broadcasting stations so as reasonably to prevent interference, and also to make reasonable rules and orders prohibiting the use of such receiving instruments as cause interference in radio reception. Violations of the act and of the commission's orders are made criminal. Apparently recognizing the possibility of conflicts between state and national regulations, the act continues: "It is the intention of this act to make reasonable state regulations within the power of the state to control interference caused within the state of Michigan, and no order shall authorize the doing of anything in contravention to the regulations of the United States."

The Nevada act (Statutes, 1928, c. 28) is the most comprehensive measure thus far enacted by a state. In effect, it declares radio broadcasting, transmission, or reception to be included in the term "public utility," and confers upon the public service commission the same powers with respect to the regulation of radio as the commission possesses over telegraph, telephone, power and light, and other public utilities. If the commission exercises the full powers attempted to be conferred upon it, conflict with the federal radio act of 1927 seems inevitable.

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PUBLIC ADMINISTRATION, 1928

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Steady progress in the improvement of the processes of public administration marked the year 1928, but possibly of even greater significance has been the development of research interest in administrative problems by organized bodies of public officials. The greatest hope for realization of higher standards of performance necessarily lies in the body of officials who are responsible for the conduct of public business, and their new interest in research as a means of discovery of improved methods is of great significance. Among the groups of officials who are breaking new ground in this direction are the International Association of Chiefs of Police, the International City Managers' Association, the reorganized Civil Service Assembly, and some state leagues of municipalities. The appointment of four research fellows by the New York State Tax Department is also full of interest. Specific reference to some phases of their work will be made in the following paragraphs.¹

Academic interest in research in this field has also been exceptional. During the year Dr. W. F. Willoughby prepared for the Policy Committee of the American Political Science Association a survey of the institutions carrying on studies in public administration, and during the year also the Problems and Policy Committee of the Social Science Research Council appointed a special Advisory Committee on Research in Public Administration, the chairman of which is Professor Leonard D. White, of the University of Chicago. Other committees of the Social Science Research Council also have dealt with special phases of administration, especially the Advisory Committee on Industrial Relations and the Advisory Committee on Social and Economic Research in Agriculture.

Administrative Reorganization. The election of Governor Kohler in Wisconsin initiated a thoroughgoing revision of the state administration, which will be developed in 1929. The Milwaukee Bureau of Municipal Research is advising the governor.

¹ This survey continues a venture initiated a year ago in this *Review* (vol. 22, pp. 339-348). The author is again heavily indebted to correspondents for assistance; and it may not be invidious to state that Professor Walter R. Sharp generously contributed the paragraphs on French administration.

Further steps were taken in Virginia to complete the reorganization which has been in progress for two years. The Administrative Reorganization Act became fully effective on March 1, 1928; and a series of constitutional amendments were adopted which go far toward completing the work. Meanwhile the problem of reorganizing county government in Virginia is being given careful attention.

The comprehensive study of Griffenhagen and Associates, Ltd., of the entire administrative structure of the state government of Ohio, on which a considerable staff has been engaged for over a year, has recently been brought to a close with the publication of the report of the Joint Legislative Committee on Economy in Public Service for whose purposes the study was made. The seven units of this report deal, respectively, with general administration, finance and taxation, agriculture, education, public welfare and health, commerce and industry, and public works and highways. A legislative program based on the recommendations of the report is now being pressed in both houses of the legislature.

The two-year program of installation of modern and effective systems of accounting and financial control for the state of Connecticut is approaching completion. Detailed standard practice instructions have been issued covering every point of procedure, for the guidance of all administrative officials and employees dealing with accounts. A new biennial budget has been prepared, utilizing vital financial information now available for the first time in producing a balanced budget, closely fitted to the actual requirements.

Perhaps the most significant development in county government is now occurring in North Carolina. Legislation of 1927 reorganized the form of county government and authorized the appointment of a county manager, established a budget and imposed a new system of fiscal control centering in the county accountant, regulated the issue of bonds, improved the methods of collecting taxes, and established a county government advisory committee. The report of this committee for 1928 reveals remarkable progress in the renovation of county administration, especially in the counties which have appointed managers. A comprehensive study of this situation is Paul W. Wager's *County Government and Administration in North Carolina* (University of North Carolina Press, 1928).²

² Reviewed in this journal, vol. 23, p. 207 (Feb., 1929).

No progress can be noted during 1928 with respect to the reorganization of the federal administration, although as a result of the election it seems more likely that decisive steps will soon be taken. In this connection a number of experts have been meeting in Washington during 1928 under the chairmanship of W. F. Willoughby and have prepared a comprehensive bill for a department of administration, including the present Bureau of the Budget and coordinating committees, the Civil Service Commission and a personnel director, the General Supply Committee, and the Personnel Classification Board.

Speaking broadly, the movement for reorganization of the state governments seems to have slowed down, possibly to have spent itself, leaving many state governments still in an archaic condition. A recent decision of the supreme court of Minnesota confirms a general reluctance of the courts to allow wide latitude to agencies of general fiscal control (*State ex rel. University of Minnesota v. Chase*, State Auditor, not yet reported). The resistance of the state universities to a system of state fiscal control, based on lack of faith in the ability or good motives of state officials, is an indication that the reorganization movement has not yet completely rehabilitated the prestige of the state government. The next step in the reconstruction of the administrative system of the state has not defined itself; nowhere is there discussion of a "local government board," or some adaptation of the Continental type of state-local administration, or even of such less radical but difficult steps as the effective correlation of the local administrative systems each with the other, except in so far as regional planning is dealing with certain contiguous areas. The continued vitality of the city manager movement may indicate that state government will experiment in the next decade with a state manager.

Personnel Administration. The year 1928 witnessed some spoils scandals of the worst order, in which all sense of public decency was cast aside (cf. Sanitary District of Chicago, police scandals in Philadelphia, and contract graft in New York), as well as some notable applications of intelligent and far-seeing concepts of staff management. Some of the best work now being done is carried on in Cincinnati by R. O. Beckman, personnel director appointed by the city manager, Colonel C. O. Sherrill. Many interesting experiments are being made toward building up the morale of the force by developing means of recognition of meritorious work, by cultivating the social life of employees, and by capitalizing the values of an honest employment situation, as well as by instilling a respect for public employment.

In the field of test construction the research division of the U. S. Civil Service Commission and the Bureau of Public Personnel Administration have continued their pioneer work. During 1928 the program of the research division of the Civil Service Commission included study of the technique of character investigations, of oral examinations, including the training of oral examiners, and of methods of examining engineers. The Society for the Promotion of Engineering Education and selected engineers are coöperating in the last phase of the program.

The Bureau of Public Personnel Administration published tests for food inspector, rodman, blacksmith, cottage master and cottage matron, storekeeper, addressograph operator, housekeeper, and baker. It also published a proposed set of standard rules for a civil service commission, and general surveys of personnel work in Cincinnati, Cleveland, and Detroit (*Public Personnel Studies*, vol. 6, pp. 81-89, 158-166; vol. 7, pp. 2-7).

The proper organization of the personnel agency is still the subject of discussion and experimentation. An attempt to introduce in Cook county, Illinois, an independent commission along lines suggested by the National Municipal League in 1924 failed because of opposition of the county board, but secured the support of the newly elected board of trustees of the Sanitary District. At the time of writing, the bill is pending in the Illinois legislature. The city managers distinctly prefer a personnel director who is a regular member of the official cabinet. The proposed federal department of administration referred to above includes a director of personnel.

The passage of the Welch bill has initiated the long delayed reclassification of the field service of the federal government. Reclassifications are also under way in the state services of Wisconsin and Connecticut. Meanwhile the Civil Service Assembly and the Bureau of Public Personnel Administration have initiated a new series; *Technical Bulletin* No. 1 is entitled "Classification and Compensation Plans." There still is little effort to relate the recruitment system to the country's educational system, as in Great Britain, and one finds little discussion of the relative merits of recruiting on the basis of general mental ability as compared with special aptitudes.

Reference to the reorganization of the Civil Service Assembly is made in another section. Attention may be called here to the growing tendency on the part of civil service commissioners to recognize the value of persons trained in preparing and evaluating tests and in

statistics. The civil service commissions of San Diego, Cincinnati, Milwaukee, Detroit, New Jersey, Maryland, Rochester, and the United States have added, or are about to add, such persons to their staffs.

A different approach to the problem of personnel is found in the interesting series of articles published in the *National Municipal Review* during 1927 and 1928, entitled "Our American Mayors." These lively descriptions of our municipal executives deserve to be bound in a separate volume.

Police Administration and the Administration of Criminal Justice. During 1928 the commissioners of public safety of Philadelphia and the police commissioners of New York and Chicago were displaced, leading to renewed headquarters activity in our three largest cities. In Chicago the police commissioner invited the University of Chicago, Northwestern University, the Institute of Criminal Law and Criminology, and the Chicago Crime Commission to make an impartial and systematic study of the department. A committee was organized and the preliminary steps are being taken.

The most significant event in the police world is the appointment of the Uniform Crime Records Committee by the International Association of Chiefs of Police, and the retention of Mr. Bruce Smith, of the National Institute of Public Administration, to develop a modern system of record keeping. Substantial progress was made during the year, leading to the publication of *A Guide for Preparing Annual Police Reports*. A tentative classification of offenses has also been issued and the coöperation of many cities secured. The research will be completed in 1929.

Important developments have also taken place in police training. The state of New York has been divided into eleven zones for training purposes, one municipal police school in each zone being designated as the training center. A uniform curriculum has been developed. In New Jersey the state police school has been thrown open to municipal police, and rapid development of a training program is anticipated. Professor Barry, of the University of Wisconsin, has initiated certain work in Wisconsin. These experiments in the field of police administration suggest at once their repetition in other fields; there should be similar schools for such specialized fields as fire fighting, street cleaning, factory inspection, sewage disposal, assessment of property and special assessment procedure, public accounting, and the like. In fact, a fire training school has been established at the University of Minnesota,

and a significant program of university and practical training is being developed at the University of Cincinnati.

The Detroit police department is continuing its intelligence tests of probationary policemen, and is comparing them with the ratings made by superior officers. Here, as in Cincinnati, the results have thus far been disappointing. The use of the radio in connection with scout cars has been brought to mechanical effectiveness. Detroit has a number of cars so equipped, which makes it possible for them to be in constant touch with orders from headquarters. As a result, a number of sensational arrests have been made. The police force of Berkeley, California, has done much experimental work with radio intercommunication and is fully equipped.

Professor Raymond Moley has been conducting a study of methods of formal accusation in criminal prosecutions, sponsored by the Social Science Research Council and supported by the Legislative Drafting Research Fund of Columbia University. The investigations of the Illinois Association for Criminal Justice were completed and are about to be published. Professor Frederic A. Thrasher initiated a three-year study of the influence of boys'-club work in New York in relation to juvenile delinquency, which seeks to reveal so far as possible the causes and means of control of incipient criminality. "A Study of Crime in the City of Memphis, Tennessee," by Judge A. A. Bruce and T. S. Fitzgerald, was published in the August, 1928, issue of the *Journal of the American Institute of Criminal Law and Criminology*.

The year 1928 is notable also for the inauguration of *The Police Journal*, "a quarterly review for the police forces of the Empire, issued under official patronage," published by Philip Allan, Quality Court, London. Although this magazine is written primarily from the point of view of the British Empire, it has a universal interest because of such articles as "Recent Medico-Legal Research in the Examination of Blood Stains and Hairs," "Mechanical Aids for Traffic Control," "Toxicology and Crime," "The League of Nations and the Suppression of Currency Counterfeiting," "Police and Public: A New Test of Police Quality," and the like. Stirred by the Savidge case and by a current of unrest in the public mind, the English government appointed a royal commission on police which is now making a thorough study of the English police system.

Public Finance. There is continued activity in long term planning for capital expenditures. The development of this movement is traced in C. E. Rightor, "The Preparation of a Long Term Financial Program"

(*Municipal Administration Service*), and George S. Ford, "Can a City Plan Serve to Reduce Taxes or Debt?"—a paper read before the 1928 Conference on City Planning. The voters of Wayne county, Michigan (Detroit), have approved a ten-year program of institutional improvements, and the governor of Michigan has recently submitted a ten-year building program for state institutions, totalling \$54,000,000.

The Cincinnati financial program is unique, because it includes the needs of the city, school system, and county. Providence, R. I., has a \$44,000,000 street opening and widening proposal; long term proposals are also being considered in Syracuse, Schenectady, St. Paul, San Diego, Santa Paula, Buffalo, Trenton, White Plains, N. Y., Dallas, Rye, N. Y., and Milwaukee. In Chicago the president of the county board has appointed a committee to develop a coördinated financial program.

Special assessment procedure is engaging much attention. Mr. Philip H. Cornick, of the National Institute of Public Administration, is completing an extensive study of the subject; the New York State tax commissioner has added a full time staff member to deal with it; and the Detroit Bureau of Governmental Research is making special studies.

A citizens' committee has completed an important study of general property assessment in Cook county, Illinois, where the 1927 quadrennial assessment was demonstrated to be so faulty that the state tax commission issued an order to reassess. The financial situation of the county and other local government bodies has been thrown into great confusion, but public interest has been focused to an unusual degree on this problem. *Municipal Administration Service* has issued "The Appraisal of Urban Land and Buildings," by C. E. Reeves.

The Local Community Research Committee of the University of Chicago has undertaken a long time study of public finance in the state of Illinois and its subdivisions, with Dr. S. E. Leland in charge. The first unit, which will be completed in 1929, is an analysis of state revenue and expenditure from 1820 to date. During the year the Chamber of Commerce of the United States has continued its interest in taxation and finance, publishing reports on federal tax revision, revision of postal rates, and state and local taxation.

The model gasoline tax law drafted by the North American Gasoline Tax Conference stressed the administrative problems involved in the collection of this tax.

In August, 1928, the National Tax Association, composed of tax officials and others interested in taxation, held its annual meeting in Seattle. During the sessions of this conference administrative officials from a number of states organized the Association of States on Bank Taxation for the purpose of inducing Congress to amend Section 5219 of the Revised Statutes relative to the taxation of national banks. The states composing this association have a common interest in the amendment of that tax law. In October, the North American Gasoline Tax Conference, composed of taxpayers and of officials engaged in the administration of gasoline taxes, met in Memphis. This was the third conference on the subject, and it appears to be but one of a series of tax conferences which tax officials have been developing to facilitate the administration of single types of tax laws and to secure more uniformity in the provisions of the various state enactments. In November, the New England States Tax Officials' Association met in Bridgeport in its sixteenth session. During the year special tax commissions were at work in a number of states, including Arkansas, California, Illinois, Iowa, and North Carolina. The reports submitted in California and North Carolina are distinct contributions to the literature in the field of government finance.

The Council-Manager Movement. Among the significant contributions to public administration in 1928 is the completion and publication in mimeograph form of a *Manual of Administrative Practice for the City of Berkeley, California*, by City Manager John N. Edy. This is a notable statement of administrative practice by a very successful manager. It is to be hoped that other municipal executives will be prompted to write down their methods of conducting public business, for a series of such reports would be of very great value.

Twenty-four cities adopted the council-manager form of government during 1928, including Fall River, Mass., Wichita Falls, Tex., and St. Joseph, Mich. Two cities abandoned this plan, i.e., Albion, Mich., and Highland Park, Tex. The charters of three Kentucky cities which approved the plan in the fall elections, Covington, Lexington, and Owensboro, have been endangered by a court decision. The official list, dated February 1, 1929, shows 401 council-manager cities.

An excellent contribution to the literature of the movement is found in the *Iowa Journal of History and Politics*: "The City Manager Plan in Iowa," by John M. Pfiffner. A valuable critical survey of five years' experience of the council-manager plan in Cleveland is found in *Greater Cleveland*, the organ of the Cleveland Citizens' League, for January 19, 1929, and reprinted as a supplement to the *National Municipal Review*.

At the annual convention of the International City Managers' Association steps were taken to change the location of the secretariat. Arrangements have been completed by which the secretariat will move to Chicago, where an affiliation will be established with the University of Chicago. Dr. Clarence E. Ridley, former city manager of Bluefields, West Va., and at present connected with the National Institute of Public Administration, will become the secretary of the Association, and has been appointed associate professor of political science in the University of Chicago. The Association retains its full independence under the new arrangement. At the same meeting the Association placed its research committee on a permanent basis and took steps to develop a substantial research program. A unit will be undertaken in coöperation with the Local Community Research Committee of the University of Chicago.

Administration of Election Laws. No outstanding events are to be chronicled in this field for 1928. Movements are on foot to secure the adoption of permanent registration, based upon the report of the National Municipal League, in Pennsylvania, Ohio, Indiana, Michigan, Missouri, and California. A permanent registration act in Kentucky was vetoed by the governor.³

Public Welfare Administration. Even a very imperfect summary of this important field would note the initiation of a nation-wide study of child welfare work of state departments of public welfare by the Children's Bureau (Dr. Marietta Stevenson); the continuation of the study of the reporting and statistical services of welfare agencies by the Russell Sage Foundation (Dr. Ralph H. Hurlin) and by the Local Community Research Committee of the University of Chicago (Mr. A. W. MacMillen); the completion of the Cook County Criminal Court and Jail; the development of significant housing projects by the Rosenwald Foundation (for colored tenants) and the Marshall Field Estate in Chicago, and by the City Housing Corporation at Radburn; and the establishment of the important Committee on Cost of Medical Care, Dr. R. L. Wilbur, chairman.

In the special field of public welfare, the field covered by the older terms "charities and corrections" and "child welfare," there is relatively little to report. Kentucky abolished the child welfare commission which had been created in 1922, created a permanent children's bureau, and authorized the creation of a children's bureau in each

³ Also in Indiana in March, 1929.

county; authorized the establishment of a mothers' aid fund in each county, to be administered by the children's bureau; made an appropriation for the state bureau and authorized levies by the counties for the mothers' aid funds (Kentucky Acts, 1928, chap. 17, p. 129). The establishment of a training school at each hospital for the insane for training psychiatric attendants was also authorized (the same, chap. 18, p. 142), and the act governing the state board of charities and corrections was amended at various points, especially by adding to the staff of the board the commissioner of public institutions (the same, Chap. 16, p. 81).

In Massachusetts there was created a public bequest commission and a public bequest fund. The commission consists of the secretary of state and the state treasurer, who administer a fund consisting of bequests, devises, contributions, etc. When the fund amounts to \$500,000 or more, the commission distributes, "with the approval of the governor and council, the income to such worthy citizens of the commonwealth as in its opinion by reason of old age and need are entitled thereto." No man under sixty-five and no woman under sixty is to be deemed so entitled (Mass. Acts, 1928, chap. 383, p. 484).

In Mississippi a commission for the blind was created (Mississippi Acts, chap. 149, p. 205), consisting of five persons, the state superintendent of education, the secretary of the state board of health, and three others—preferably including one blind person. The creation of so-called "children's aid funds" by the counties, to be administered by courts of equity, was also authorized (the same, chap. 84, p. 103); likewise the sterilization of patients in certain state institutions who are "afflicted with hereditary forms of insanity that are recurrent, idiocy, imbecility, feeble-mindedness or epilepsy." The consent of the board of trustees and the recommendation of the superintendent of the institution are required (the same, chap. 294, p. 370).

As to the literature in the field, attention should be called to the recent establishment of a research department at the University of Virginia which has already resulted in the publication of a *Statistical Study of Virginia* and a *Study of Public and Private Welfare, Roanoke, Virginia*. From the University of Virginia come also *An Economic and Social Survey of Augusta County*, by Clay Catlett and E. Y. Fishburne, and a *Survey of Wise County*, by R. E. Kennedy.

Fred P. Johnson, chief probation officer in Detroit, is responsible for an admirable text-book on probation for juveniles and adults. *The Committee on Penal Affairs* has a discussion of the treatment of

adult offenders and children by the courts of Berks county, Pennsylvania.

The Kansas City Public Service Institute has put out a *Survey of Jackson County Government*, including a chapter on charities and corrections; the U. S. Children's Bureau has set out in *Welfare of Prisoners' Families in Kentucky* (Publication No. 182) the meaning of imprisonment of the head of the family to the children in the family group; and Robert W. Kelso's *Science of Public Welfare* undertakes a comprehensive statement of the problem in the modern social and economic scheme.

Measurement of Administration. This fundamental topic continues to hold the attention of some groups of public administrators. Dr. C. E. Ridley is chairman of a joint committee which represents the National Municipal League, the International City Managers' Association, and the Governmental Research Conference. The committee is developing techniques of measurement for different fields, commencing with street cleaning. The Civil Service Assembly at its Denver meeting set up a round table on measuring the efficiency of civil service commissions, and the Colorado Municipal League is repeating, after an interval of five years, its interesting rating of Colorado cities.

A related enterprise to which much attention is being given is the matter of public reporting. Two significant books have appeared: Herman C. Beyle, *Governmental Reporting*, and Wylie Kilpatrick, *Reporting Municipal Government*. The golden age of public reporting inaugurated by Mr. Morris L. Cooke of Philadelphia hardly endured after his retirement, but much good reporting is being done. Attention may be directed to an interesting experiment in the 1927 and 1928 annual reports of City Manager John N. Edy of Berkeley, and to the uniformly admirable reports of Dr. E. W. Allen, chief of the U. S. Office of Agricultural Experiment Stations.

Institutional Development. Attention has already been called to the reorganization of the International City Manager's Association.

At the Denver meeting in September, 1928, the National Assembly of Civil Service Commissioners took significant steps to make the work of the group more effective. A new constitution was adopted providing (among other things) for the holding of four regional conferences as well as the annual international convention. The first Central States Regional Conference was held at Evanston in February, 1929. The name of the organization was changed to the Civil Service Assembly of the United States^{and} Canada, a technical bulletin series was

authorized, and the Bureau of Public Personnel Studies was made the secretariat.

Four new bureaus of government research were established during the year: the Erie County (Pennsylvania) Taxpayers' Association, the Schenectady Bureau of Municipal Research, the Sioux City Bureau of Municipal Research, and the Baltimore Bureau of Municipal Research. The University of Cincinnati established a Municipal Reference Bureau.

The Institute for Government Research at Washington became a unit in the new Brookings Institution, together with the Institute for Economic Research. The Cleveland Bureau of Municipal Research has been discontinued. A comprehensive business investigation of the city of Cleveland, of the Board of Education, and of Cuyahoga county, which will require three to five years for completion, has been initiated by the Cleveland Chamber of Commerce.

The Division of Public Administration of the University of Southern California initiated in 1928 an interesting "short course" in many phases of municipal administration. Some 750 persons representing fifty-six cities and towns in seven states participated, in twelve sections. The second short course will be held in June, 1929.

Outstanding Administrative Developments in France during 1928. Following the death by airplane accident of M. Bokanowski, the talented minister of commerce and industry, the French cabinet decided on September 14 to establish a separate air ministry. The new ministry was instituted early in October, with M. Laurent-Eynac, formerly under-secretary for aeronautics (1921-26) as its head. Over the strong objections of the war, navy, and colonial ministers, the aeronautic branches of those three departments were transferred to the new air ministry (decree of October 2, 1928). Tactical utilization of air personnel is, however, to remain under the control of the three older departments. The "air" budget, according to the decree mentioned, will be prepared by the new minister in consultation with the ministers of war, navy, and colonies.

A renewal of the twenty-year struggle between the French government and the staff associations (syndicates) of the administrative services culminated on March 16 in the overwhelming defeat by the Chamber of Deputies of a bill that proposed to extend to the *syndicat de fonctionnaires* all the privileges of the laws of 1884 and 1920 dealing with trade union "liberties." The bill would not only definitely have legalized the civil servant associations virtually as trade-unions, but

would have permitted them (1) to form inter-departmental federations, (2) to adhere to industrial unions, (3) to acquire property and sue and be sued in the courts. Although the bill was strongly supported by the organized civil servants, it received only 190 votes, chiefly from the socialist and radical-socialist groups in the Chamber, after M. Poincaré, a bitter enemy of the proposition, had made the matter a "question of confidence." The fight will probably break out again during the present year, for already (January 15) the ministry is being pressed by its conservative supporters to introduce a bill that will establish a general code (*statut*) governing recruitment, promotion, discipline, civil responsibility, and liberty of association for all state employees. The general secretary of the *Fédération des Syndicats de Fonctionnaires* has once more announced the unwavering hostility of the rank and file of the civil servants to a general *statut* if it is to be linked with restrictions on their *droit syndical*. They hold that a uniform code is neither necessary nor desirable, in that the rules of each ministry now regulate satisfactorily the rights and duties of its staff. Meanwhile, the government will doubtless continue to wink at the existence of the present staff associations and their active participation in the C.G.T. outside. Even if not a *de jure* situation, it is too strong a *de facto* one for any cabinet to attempt to change with political impunity.

The year also saw further progress in the tedious and laborious effort to reclassify and "revalorize" the scales of pay for the various categories of state employment. By August, a governmental commission, appointed in February, 1927, for the purpose, had succeeded in reducing 1,775 different salary schedules to about 150. In the autumn this process was interrupted by a new movement to bring state salaries into harmony with the legally stabilized franc; in other words, to adjust them to the present value of the franc, with the 1914 rates of pay as a basis. Ultimately, this would mean multiplying pre-war salary scales by a coefficient of at least five in all cases, with some special adjustments for classes that are generally recognized as being decidedly underpaid in 1914. Parliament voted around 350 million francs in December as an initial partial credit for this task, which it is thought will require three years for completion. Total "revalorization" as now contemplated will probably result in a basic salary scale of 9,000 to 125,000 francs, in contrast with the existing range of 8,000 to 80,000.

A new law passed March 16, 1928, extends to laborers employed by the state a more liberal scheme of retirement and disability pensions than that to which they had previously been entitled.

Literature. Among the chief contributions to the literature of public administration to which reference has not already been made, special mention should be given Professor Ernst Freund's *Administrative Power over Persons and Property*, and William A. Robson's *Justice and Administrative Law*. These volumes, the *Harvard Studies in Administrative Law*, and the work of the Legal Research Committee comprise a notable addition to the field of administrative law.

The Brookings Institution (Institute for Government Research) published five important works in 1928: L. Meriam, *The Problem of Indian Administration*; L. F. Schmeckebier, *The District of Columbia*; Jenks Cameron, *The Development of Governmental Forest Control in the United States*; H. P. Seidemann, *Manual of Accounting, Reporting, and Business Procedure for the Territorial Government of Hawaii*; and F. F. Blachly and M. E. Oatman, *The Government and Administration of Germany*. *Municipal Administration Service* published seven contributions; E. D. Greenman, *Codification of Ordinances*; F. G. Crawford, *The Administration of the Gasoline Tax in the United States*; A. J. Post and G. H. McCaffrey, *Street Name Signs*; Wylie Kilpatrick, *Reporting Municipal Government*; C. H. Chatters, *The Enforcement of Real Estate Liens*; C. E. Reeves, *The Appraisal of Urban Land and Buildings*; and G. C. Havenner, *Photostat Recording*. Mention is also due H. A. Stone and G. E. Stecher, *Organization and Operation of a Municipal Bureau of Fire Prevention*, published by the Syracuse School of Citizenship and Public Affairs.

FOREIGN GOVERNMENTS AND POLITICS

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The National Government of China.¹ The government at Nanking set up in April, 1927, by the Kuomintang (Nationalist party), in promulgating an "organic act" on October 4, 1928, took the title "national government." On the seventeenth anniversary of the outbreak of the Republican revolution, October 10, 1928, the system of government provided for by the act was inaugurated. The act was drafted by the law codification bureau at Nanking and revised by a committee composed of Wang Chung-hui, deputy judge of the Permanent Court of International Justice, Hu Han-min, and Tai Chi-t'ao.²

Since November, 1924, when, upon the ousting of President T'sao K'un, the "permanent" constitution adopted a year before was suspended, China has been without a fundamental instrument of government. The four intervening years, like the eight which preceded them, have been filled with interregional warfare. At Peking a provisional president, Tuan Ch'i-jui, was followed by a dictator, Chang Tso-lin. Elsewhere, regional capitals exercised the actual powers of government. From Canton in May, 1926, was initiated a campaign to bring all China under Kuomintang authority. The success of the campaign enabled the Nationalists to establish a government which received recognition by the United States on July 25, 1928, and has since been recognized by every state having important relations with the country. Japan has extended recognition of the government as *de facto* only.

A brief reference to republican constitutional history is sufficient to explain why Chinese liberals have created an oligarchy. The "pro-

¹ The writer has used the releases of *Kuo Min*, Nationalist news agency, which contain summaries of the important documents and of the minutes of the major party and administrative agencies. Some of these releases are used by all leading foreign language newspapers in China, such as the *Peking Leader*, the *North China Daily News and Herald*, and the *Peking and Tientsin Times*.

² Printed in *Current History*, vol. 29, pp. 526-28, Dec., 1928. Dr. Wang Chung-hui's brief discussion, "The Five Power System," was published in *The China Critic*, vol. 1, pp. 428-30, Oct. 25, 1928.

visional" (1912-14, 1916-23), and the "permanent" (1923-24) constitutions, modelled after Western parliamentary instruments, failed of effectiveness because they did not recognize realities in the locus of power. The provisions to insure parliamentary supremacy were futile in the presence of executive military resources. Intimidation and gross bribery made of Parliament a laughing stock. It had only sufficient influence, during its brief rejuvenations, to hinder the executive. In 1923 the advisers from Moscow appeared on the scene. Under their tutelage the revolution prospered, and eventually its armies captured Peking.

Contemporary with this new influence was the recollection that Dr. Sun Yat-sen, organizer and leader of the Kuomintang, had envisaged the revolution as a series of three stages: (1) military achievement; (2) tutelage; (3) democracy. This justified suspension of the ambitious republican program of constitutionalism in the interest of a workable scheme. Democracy was to develop from the localities upward, and the more progressive localities and provinces were to form models for the rest. Eventually—whether soon or late was not conjectured—the conditions throughout all China would warrant the erection of representative government. The present order at Nanking is temporary—the bridge of tutelage between the military and democratic eras.

Observers of the vain efforts toward the establishment of parliamentary government, which have written republican history as a record of discouragement, had come reluctantly to believe that a practicable system must rest upon a compromise between the liberals and the *tuchün*, and must find places for all of the latter who were sufficiently powerful to endanger peace if excluded. What seemed essential was a directorate at the capital actually representative of regional controls. With this, there was need for a progressive and able group of civilian officials to suggest ways and means of organization and administration. The questions still unsolved were: (1) Could the rival *tuchün* be brought to coöperate? (2) Could a liberal group of civilians coöperate with the militarists? The present régime at Nanking is an attempt to answer these questions.

The law codification bureau had in mind a provisional document including articles defining private rights and duties, demarcating central and provincial authority, and stating the relationship between the Kuomintang and the government, in addition to the forty-eight articles on the organization and functions of the central government

which constitute the promulgated act. To a considerable extent, the organization of the government had been worked out and was functioning prior to its promulgation. The point was made, however, upon the inauguration of the system as such that a president and a council in the nature of a responsible cabinet were taking the place of commissions which had exercised power without responsibility. It is believed that this distinction is justified, provided it is understood that the responsibility lay toward the party, not toward an electorate. The significant changes were the elaboration of the system and the centralization of administrative responsibility. Just as in the earlier organization all power emanated from the Kuomintang congress and was exercised by the executive committee, so in the present order of things the ultimate repository of power is the party congress. Responsibility is today more readily traced, hence more real.

Concurrently with the adoption of the organic act, the government published six fundamental principles which assist to an understanding of its constitutional theory: "1. During the period of political tutelage the national congress of all Kuomintang delegates shall represent the national convention in guiding the people and in exercising political sovereignty. 2. At the adjournment [of the annual session] of the national congress of Kuomintang delegates the political powers shall be vested in the central executive committee of the Kuomintang and be exercised by the committee. 3. The people shall be gradually trained to exercise their four political rights, viz., election, recall, initiative, and referendum, as determined by the party's late leader, in order to lay the foundation for constitutional government. 4. The five political powers of the government, viz., executive, legislative, judicial, examining, and supervisory, shall be vested in the government (or state) council, which shall have complete authority to exercise them so as to build a foundation for a government by popular election during the period of constitutionalism. 5. The central executive committee of the Kuomintang and the central political council shall direct and supervise the government council in the execution of important national affairs. 6. The revision and interpretation of the law governing the reorganization of the national government shall be determined and executed by the central executive committee of the Kuomintang and the central political council."

These "principles," which are summarized in the preamble of the organic act, express the views of Dr. Sun Yat-sen regarding the four political rights of the people and the five political powers of the govern-

ment, and link up the Kuomintang with the administration, supplying an interpretation of the most important elements in the present order of things.³ The first of the six defers to Dr. Sun's urgent desire for a people's conference; the third states the purpose to provide education for the exercise of political rights, indicating the present necessity of using the annual party congress in place of a people's conference. The others clearly state that during the period of tutelage political power resides in the Kuomintang congress and the executive committee as representatives of the people, that it is to be exercised in five divisions, and that the agencies exercising it are to be supervised and directed by the major party committees. The whole scheme belongs to Sun Yat-sen. If it continues to work, Dr. Sun's reputation as a practical statesman will be redeemed, at least to the extent of capacity to conceive a system for others to administer.

The national government is best analyzed by proceeding downward from an apex—the Kuomintang annual congress—to a base composed of the eleven ministries and five committees. The Kuomintang congress is the final authority in the party, determining policy and selecting the central executive committee and central supervisory committee. Though in theory annual, it did not meet between 1926 and 1929.⁴ It is a large body, chosen in part by the central executive committee, in part by the members of the party, who elect delegates from a variety of units—the provinces, special districts, overseas, armies, railways, and seamen. Elections of provincial delegates take place in three stages—local, district, and provincial. Only registered members of the Kuomintang may vote or stand as candidates. Although membership is open, without sex distinction, to all who pay the fee and are loyal to the party, it is still relatively small, probably not exceeding 500,000. The congress meets at the call of the central executive committee, which may call it into special session also or postpone the regular session for a period not exceeding one year. Corresponding to the national congress are the party conventions in the provinces, districts, municipalities, and branch localities.

Second in theory and first in fact in control of the party is the central executive committee, of thirty-six members, with a standing committee of nine members, elected annually by the congress and exer-

³ *San Min Chu I*, by Sun Yat-sen, translated by F. W. Price (Shanghai, 1927), Lect. 6.

⁴ The third congress was convened at Nanking on March 15, 1929.

cising final authority when the congress is not in session. The standing committee carries the burden of party work, meeting weekly and deciding all issues not delegated to other agencies as well as those sent up to it by them. The membership roll of this committee includes the civilian and military men who dominate the present government, as well as others who are temporarily out of power, such as Wang Ching-wei and Eugene Ch'en. The civilians now in control are moderate liberals, while the military members, though *tuchünal* in type, are more progressive and public-spirited than such predecessors as Yuan Shih-k'ai, Wu Pei-fu, and Chang Tso-lin. Comprising a number of factions, however, the committee is subject to the danger of rupture from both civilian disagreements and militarist jealousies. Provincial, district, and local executive committees parallel the central committee in the subordinate party headquarters. A central supervisory committee, also elected by the congress, audits party finances and censors the activities both of the agencies and of the members of the party.

A third body, the central political council, is the link between the party and the administrative organs of the central government. Appointed by the central executive committee, it includes, *ex officio*, the members of that committee, of the central supervisory committee, and of the state council. Other members, in number less than half the *ex officio* members, may be added by the central executive committee. The central political council meets weekly and may be regarded as fulfilling the deliberative functions of a national legislature. In its meetings both party and governmental problems are threshed out and conclusions reached upon policy. If these conclusions are agreeable to the central executive committee, they are forwarded to the state council to be carried into effect. The central political council has no authority to issue orders or instructions or to execute policy.

The provinces, districts, etc., do not have political councils, but "divisional" political councils exist in areas composed of groups of provinces—at Canton, Hankow, Taiyuan (Shansi), Peiping (Peking), Sianfu (Shensi), and Mukden. These councils exhibit the actual power of the military factions and each is dominated by a *tuchün*. The councils in fact determine the government personnel and policies of their respective areas and the distribution of troops and public revenues within them. Great difficulty has been experienced in maintaining a coöperative relationship between them, and the central government cannot exist as the government of China unless they continue to coöperate. An effort is being made to eliminate the

divisional councils, but their elimination would yield nothing toward greater unity so long as the militarists who control them remained.

The relationship between the Kuomintang and the administration is suggested but not clearly stated in the organic act. The preamble says that the Kuomintang ordains and promulgates the act. The first four articles refer to the "national government" as though it were the supreme repository of power, but the remaining articles make it apparent that "government" would be more accurately translated "administration." Consequently the body of the act fails to state where final authority resides. It does not indicate to whom the president and the state council are responsible nor how political decisions are made. Hence the importance of the above-quoted "fundamental principles" to an understanding of the actual system.

The highest governmental organ, as distinguished from the agencies of the party, is the state council, composed of a chairman and sixteen members appointed by the central executive committee. The chairman is General Chiang Kai-shek (*chieh-shih*), and the membership comprises in about equal proportions the most influential of the civilian and military leaders of the dominant group, including the "young marshal," Chang Hsueh-liang, of Manchuria. The president of the national government is ex officio chairman of the state council. The presidents and vice-presidents of the five government departments, or *yuan*, must be chosen from the membership of the state council. The same men control the central executive committee, the central political council, and the state council.

The state council carries out the decisions of the central political council and the central executive committee. Through it is cleared all important government business, and its orders are known as mandates. The organic act (Art. 11) provides that "the national government shall conduct national affairs through the state council." By Art. 1, "the national government shall exercise all the governing powers of the republic of China." These provisions, which appear to confer final powers of governance upon the state council, must be read in the light of the known relations between it and the party committees. But so long as the state council is, in personnel, a replica of the central executive committee, there is no basis for deadlocks over the question of authority.

"The national government shall be composed of the following five *yuan*: executive, legislative, judicial, examination, and control *yuan*" (Art. 5). Neither the president nor the state council is mentioned in

this article. The following article, however, provides for a president and councillors of the national government. Thus the president's office exists independently of the state council, though the president naturally and legally functions also as chairman of that body. He is specially authorized to exercise diplomatic and other representative functions of a ceremonial nature and to be commander-in-chief of the land, naval, and air forces. Appointments are made by the state council, with the approval of the central political council. The power to declare war, negotiate peace, and conclude treaties lies in the "national government" (Art. 3), and is exercised through the state council (Art. 11).

Responsible to the state council are the five boards or *yuan* (the latter word has no exact English equivalent). They include the customary three departments, executive, legislative, and judicial, and add an examination, or civil service, *yuan* and a control, or supervisory, *yuan*. The latter two were urged by Sun Yat-sen as essentially Chinese, carrying over the Imperial traditions of emphasis upon high merit as the qualification for public office and of an independent censorship of official conduct. He held the latter two functions to constitute independent spheres of governmental action, of equal importance with the former three.

The executive *yuan* consists of a president and vice-president, the ministers of ten departments—foreign affairs, finance, war, interior, education, communications, industry and commerce, agriculture and mining, railways and health—and the chairmen of the five extra-departmental commissions, viz., reconstruction, overseas affairs, labor, Mongolian and Tibetan affairs, and finance. It may be conveniently regarded as a cabinet of which the president of the *yuan* is the prime minister. The *yuan* is empowered to establish departments and commissions and to determine their functions. It may introduce draft bills into the legislative *yuan*. It prepares the budget, recommends appointments and removals, and engages in preliminary consideration of executive policy on behalf of the state council.

The legislative *yuan* is the largest of the five, having an upper limit of ninety-nine and a minimum of forty-nine members, in addition to a president. The members, as in the other *yuan*, are appointed by the central political council. The legislative *yuan* is a forum for the preliminary examination of mandates and treaties which it may draft or revise before forwarding them to the state council for transmission to the central political council. After decision upon these documents

by the latter, followed possibly by final review in the central executive committee, they are returned to the state council for promulgation. The legislative *yuan* meets as such, and it also works through four committees, i.e., law-drafting, foreign relations, finance, and economics.

The judicial *yuan* was empowered by the organic act to "take charge of judicial trial, judicial administration, disciplinary punishment of officials, and trial of administrative cases" (Art. 33). Its president is, in effect, not only an attorney-general but a supreme judge, competent to give uniform interpretation to the laws. The *yuan* comprises a ministry of judicial administration (which increases the total number of the executive departments to eleven), a supreme court, and an administrative court. It may introduce draft bills upon matters within its competence into the legislative *yuan*.

The examination *yuan* has been well described as a civil service commission. Art. 37 indicates the broad reach of its functions: It "shall take charge of examinations and determine the qualifications for public service. All public functionaries shall be appointed only after having, according to law, passed an examination, and their qualifications for public service having been determined by the examination *yuan*." Clearly the value of this *yuan*, granted that it is permitted to function at all, will depend upon the standards it devises for the testing of candidates. It may be noted that the ministry of foreign affairs held written and oral examinations in November last for the selection of diplomatic and consular officers. The written examinations covered a field of subjects considerably wider than that required by the American department of state. Out of 177 candidates, forty-five were successful. The foreign minister announced, however, before the examinations that emphasis would be laid upon a thorough understanding of party principles, and that the choice of new ministers and consuls would naturally fall upon persons who were party members with meritorious records of party service.

The control *yuan*, to be composed of from nineteen to twenty-nine members, has the functions of audit and impeachment. It is intended that this organ shall act the courageous part of the ancient censorate, accusing officials high and low believed guilty of illegal or unjust action. Members are to be posted throughout the country as the old censors were. Its functions as a board of audit cover not only national but provincial and local receipts and disbursements. It would seem that the censorial function is anachronistic in a modern state. Its

strength rested in the past upon the fetish of loyalty to a dynasty, its importance upon the necessity of fearless criticism in a political order where private criticism of an official was highly dangerous and extremely difficult to bring to a superior authority's attention. It is not surprising that special difficulty is being experienced in finding members for this *yuan*.

The organic act contains no bill of rights and no provisions concerning the respective spheres of the central government and the provinces. It is little more than a compact between the rival factions, providing a *modus vivendi* until more favorable conditions permit the resumption of a program of liberalism. It may be believed that the fragment of a system herein outlined affords a sounder basis for progress than any hitherto devised for the Chinese republic. Republican history suggests, however, the danger of setting one man above another. It may be that a small directory, possibly in the form of a standing committee of the state council, would constitute a more stable executive headship than a president. Already there are signs of revolt on a dangerous scale, and murmurs against President Chiang Kai-shek. Although the president's authority is more nominal than real, it would be desirable to avoid, if possible, the appearance of superiority if it is to create jealousy.

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The "Dictatorship" in Yugoslavia. The coup d'état, so-called, which, on January 6, 1929, brought into being a new form of government and established a new type of constitutional régime in the kingdom of the Serbs, Croats, and Slovenes, marked the end of exactly a decade of experimentation with the traditional principles of parliamentary government. That this "critical period" had not been an unqualified success is admitted by statesmen, diplomats, and politicians alike; that it was abruptly ended by the personal intervention of King Alexander and the supercession of the Vidov-dan constitution is equally a matter of fact. From Zagreb to Belgrade the passing of the political order which had obtained in the triune kingdom since 1918 has brought general rejoicing; outside the country, however, the queries have been raised: Is the change indicative of the future fate of all democracies, and have not the doctrines of fascism, of military dictatorship, of camarilla government, simply been transplanted to the Yugoslav capital from Rome and Madrid respectively?

The situation is not to be understood merely by drawing hasty conclusions as to the prospective demise of democratic or parliamentary government everywhere, nor is it possible to speak, with any scientific accuracy, of the new régime in the Serb-Croat-Slovene state as a Balkan adaptation of the Italian and Iberian dictatorships. The occurrence of this constitutional change in the life of the Yugoslav people has its own distinctive *raison d'être* and does not flow from mere facile imitation of dictatorial practices in other countries. It is the product and the response of a monarch and his people to the exigencies of a situation, the adaptation of new forms and methods to the problems of a state still in the throes of the process of becoming.

The Old Régime and Its Failure. There can be no question that the World War greatly accelerated the movement for Yugoslav unification, that it in fact precipitated the formation, from peoples divided by barriers of religion and kept apart by all the wiles known to Austrian statecraft, of a single Yugoslav state which, at the Peace Conference of Paris, was welcomed with Wilsonian benedictions into the family of nations.

But despite the fact of formal unification through the concerted action of diplomats and the various agreements of responsible Yugoslav politicians, despite the momentary enthusiasm of the masses of the populace in the world-stirring days of 1918 which witnessed the collapse of Austria-Hungary, it was not long before it became apparent in the life of the Yugoslav state that the moral unity of the population, essential to the rapid political integration of a nation, was seriously lacking. On the west, Croatia, preponderantly peasant, Catholic in its tradition, Western in its orientation, imbued with republican ideals, and shot through with the economic impulses of the agrarian revolution elsewhere making rapid conquests in Europe, tugged at the leash within the three-fold monarchy. To the northwest the Slovenes, logical products of particularism under the old Habsburg monarchy, sought to establish for themselves, under clerical leadership and auspices, regional autonomy of a distinctive character. There remained the problem of reconciling the mixed populations in the Voivodina and South Serbia, the Moslem inhabitants of Bosnia and Herzegovina, and the proud, rugged, mountaineer tribesmen from Montenegro to the necessity of submission to a common government.

Eminently desirable as union was in principle, in practice, under a centralist constitution, the surrender of historic rights and the superseding of jealously guarded traditions took place under the haughty

auspices of a Serbian bureaucracy which rapidly penetrated into the smallest administrative posts throughout the country—outside of Slovenia. In the course of a decade of domination of the national administration by the Serbian political parties at Belgrade, the flooding of the civil service with political appointees representing almost exclusively a Serbian viewpoint corrupted political life generally. Toward the end of the period it could be noted that the Croatian element, more European and less Balkan in its conception of political morality and administrative competence, was practically unrepresented in the state administration, the army, or the diplomatic service of the monarchy.¹

Moreover, the Croat and Slovene portions of the country, which had been spared the ravages of the World War, were called upon to bear the brunt of taxation under fiscal legislation in the making of which they either had or took no part. From the standpoint of the *prethani*, the outer provinces were not only being farmed out to an incompetent Serbian bureaucracy, but were, in addition, being made to pay disproportionately. In short, a condition which was borne with patriotic sacrifice for a year or two after the war tended to be turned by the politicians at Belgrade into a permanent economic vassalage, breeding cumulative provincial resentment against the capital. It followed from such a situation that the normal prospects of psychological entente, the possibilities of conscious political understanding, particularly between Serbs and Croats, were predestined to be indefinitely retarded. So long as Serbian control of the government continued, tension between the local populace and the Serbian administrators was bound to exist. Plainly, from an administrative standpoint, the moral unification anticipated at the end of the war had not taken place.

But the grievances in Yugoslavia were not only administrative; they were constitutional and political as well. A government which in 1918 had started out on a quasi-federal basis had, by the end of 1928, thanks to the Vidov-dan constitution, become increasingly centralized. The Serbian hegemony, which began in a purely administrative way before the constitution came into being, was, after 1921, definitely consecrated by the constitutional structure, and was doubly buttressed by the internal party situation.

¹ Cf. the *Zagreb Obzor*, May 8, 1928.

The story of that complicated evolution need only be sketched here. The first pronouncements of the Prince-Regent, on taking the oath of office in 1918, had been in favor of "a democratic constitution, conceived in the spirit of state unity and allowing for a wide administrative autonomy, with guarantees for the widest political liberties and civic rights."² In accordance with the spirit of the royal pronouncement, a distinctly liberal draft constitutional project was brought forward by Premier Protić in 1920.³ It was not, however, destined to be carried into effect. With the return of the patriarchal Pašić to office in the fall of 1920, the program of decentralization was discarded and a system of centralized administration, on Serbian models, was put forward and, with a few tempering changes, vigorously pushed to enactment by the constituent assembly. The result was to subject the triune kingdom to a régime of rigid centralization, not tempered by genuine autonomy in local affairs, and requiring, as a logical consequence, a larger national bureaucracy and added national expenditure, while officially exterminating the "historic" regions, or formerly independent political units, such as Montenegro.

From the beginning the Vidov-dan constitution was unpopular. It had been voted in the absence of both Slovenes and Croats—a fact which deprived it of high moral prestige and which gave a prevailingly Serbian tone to the document. It was not long before proposals for its modification were advanced by the Slovenes,⁴ the Croats,⁵ and the Yugoslav Democratic party.⁶ The outstanding fact, however, from

² *Rijech S.H.S.*, January 7, 1919.

³ Belgrade *Politika*, April 17, 1921.

⁴ The Slovene program proposed the division of the country into six provinces, these to be subdivided into districts and communes, each with its deliberative assembly and executive committee. The scheme was not unlike that obtaining in Prussian, and, to a lesser extent, in the old Austrian, provincial administration. Cf. *Slovenež*, February 13, 1924.

⁵ The Croat proposals, usually couched in a vague phraseology, were repeatedly put forth in varying forms. Perhaps the tersest statement of their point of view was made officially to Premier Pašić at Zagreb on April 13, 1923: "To modify the [existing] régime in the constitutional and legal sense and to transform the administration in the sense of autonomy." Cf. *Bulletin Périodique de la Presse Yougoslave*, No. 43, May, 1923. A more elaborate statement is found in the manifesto of the Yugoslav Revisionist Bloc, made at Belgrade, March 22, 1925. Cf. *Bulletin Périodique de la Presse Yougoslave*, No. 59, May 20, 1925, citing *Politika*, March 23, 1925.

⁶ An elaborate and carefully developed program of decentralization amounting almost to federalization was put forth at the end of 1923 by M. V. Marin-

the end of 1921 to the end of 1928 was that no reform of the constitution took place. Paper projects might be advanced, the Skupshtina and the party congresses might reverberate with declamations in favor of change; the stubborn fact remained that the constitution was unaltered, grew daily more rigid in practice, and, despite the oscillations of parties and the reallocation of portfolios, became the principal vehicle for the retention of control by the Serbian and Moslem political parties.

An additional factor, which helped to aggravate an already critical situation, was the failure of the parliamentary system owing to the lack of genuine national political parties. The effort honestly made after the formal unification, particularly by the Democrats, to found truly national parties proved a disappointment. The national idea, which presupposed a Yugoslav and not a particularist mentality, did not "take," with the result that no one nation-wide party really existed apart from the socialist and communist groups which, in an essentially agricultural country, were practically impotent. The new state was thus saddled from the beginning with an incubus of militant factionalism that was the direct result of pre-war Austrian and Magyar policy and intransigent Great Serbian nationalism.⁷

ković, and adopted by the Democratic Central Committee. The project would have reserved to autonomous regional bodies, with independent taxing power, all matters other than those connected with diplomacy, the army, the courts, police, educational policy, worship, state finance, communications, posts, telegraphs, and telephones. This would have meant, of course, a marked reduction in national expenditure. Cf. *Politika*, December 27, 1923.

⁷ An excellent appraisal of the party situation after five years of unification is given by a British journalist. Writing of the Yugoslav Democratic party's unsuccessful attempt to become really national, he says: "Distinctly a Yugoslav, as opposed to a Serb party, the Democrats were most numerous in the provisional Skupshtina, but were too heterogeneous to hold together, and had a mistaken fundamental idea. As the believers in real national unity, they gained numerous adherents, but actual circumstances, such as local patriotism and tribal consciousness, renascent after the war, doomed their scheme to failure. . . . Croat and Slovene particularism refused to merge in a new Yugoslavdom, more especially as the Serbs would have nothing to say to it. The result was that in Croatia increase of strength went to the party which agitated most strongly against Belgrade, and that in Slovenia the Autonomists, under Dr. Korošec, gained almost every mandate. In short, the consequences of the Democrat point of view proved disastrous to the party. In Serbia it was ousted by the Radicals, in Croatia by M. Radić's adherents, and in Slovenia by the Clericals." Letter from Zagreb, *The Near East*, Vol. 26, pp. 448-450 (October 30, 1924).

Without parties of a genuinely national character to build on, both democracy and the parliamentary system were predestined to be sterile. In the Skupshtina petty groups quarrelled interminably over trivialities; coalitions had to be constructed by continually purchased compromise; there was no substantial basis of cohesion among factions, and hence the life of any given cabinet came more and more to depend on the placating of personal grievances and the frequent redistribution of political patronage. In older and more established nations such political fiddling would have been sorry enough; for a young state it was suicidal. Even before the tragic events of June 20, 1928, which turned the Skupshtina into a shambles, the parliament had exhausted its political capacity and ceased to be of constructive value to the nation. In lieu of attempting the rapid solution of critical problems, it exhibited only the impotence of masterly inactivity; in lieu of energetic executive action by an efficient cabinet, there existed only the deadening paralysis of forced and factious coalition. It was small wonder that, as crisis after crisis came and went without real solution, the chief of state came to realize that a bickering chamber, without a consensus of opinion on fundamental questions, was an inexcusable luxury to a nascent kingdom, an institution which could be at least temporarily dispensed with in the interests of genuine national progress.

The failure of parliamentary democracy in Yugoslavia was due, then, to the fatal convergence of administrative inefficiency, constitutional over-centralization, and the lack of genuinely national political parties. To cleanse the Augean stables of Yugoslav politics was a formidable task requiring heroic measures. It was this which faced King Alexander.

With royal fortitude and remarkable patience, the monarch had waited to see what a decade would bring forth. When the decennium closed, he could endure the situation no longer.⁸ Summoning General

⁸ It is unnecessary to consider in detail the specific steps by which the monarch was brought to take these decisive measures. After the massacre of the Croat deputies by a fanatical Montenegrin in June, the Croats had withdrawn from Parliament and denied it legislative competency (cf. *Narodni Val*, June 22, 1928, cited by the *Bulletin Périodique de la Presse Yougoslave*, No. 81, September 11, 1928). Later, on the eve of Radić's death, the Croats suggested, once again, the dissolution of the incompetent parliament and the formation of a "neutral" ministry to function pending elections to a new constituent assembly (*Narodni Val*, August 2, 1928, citing the resolutions of August 1, taken by the party). On the very eve of the *coup*, they had suggested a non-parliamentary cabinet representative of all parts of the country, and the re-

Peter Zivković, his devoted guardsman, he entrusted him with the task of political, constitutional, and administrative renovation, and broke cleanly with the past. It was not the first time that the Gordian knot of Macedonian problems was cleft by the master stroke of an Alexander. Within three hours of the royal summons the new régime—"the Christmas cabinet," as it was called in Belgrade (O.S.)—was brought into being.

The New Régime and its Work. The royal intervention was announced to the public by a formal proclamation which is of unusual importance on account of the political theory it embodies.⁹ Just as, on January 6, 1919, Alexander had announced *directly to his people*,¹⁰ his

vision of the constitution in order to restore the historic units formerly comprising the country. As none of the Serbian or Moslem parties would assent voluntarily to such proposals, the monarch had no alternative except to impose the solution dictated to him by the circumstances (cf. *Le Temps*, January 7, 1929). The text of the last communiqué of the outgoing Koroseč government is significant in this connection: "On the occasion of the audiences accorded them on January 4th and 5th, MM. Maček and Pribičević declared, in the name of the Peasant-Democrat coalition, that a complete revision of the constitution must take place, with a view to the restoration of the historic regions, with their legislatures and executives. To this end, a neutral government would be a form which would enjoy the confidence of the sovereign and which, by its composition, would guarantee that the aforesaid matters would be acted upon. In consequence the Skupshtina must be dissolved, and elections for a constituent assembly must be decreed." *Ibid.*, January 7, 1929.

⁹ For the text cf. *L'Europe Nouvelle*, 12th year, No. 570, pp. 49-50 (January 12, 1929).

¹⁰ "By the unanimous decision of the nation," ran the royal proclamation, "all the hitherto divided sections of our native land have joined together in a united kingdom. By the will of the people, . . . I have, in agreement with the leaders of all parties in Serbia, Croatia and Slovenia, proceeded to the formation of our first state government, as the outward and visible sign of our . . . complete brotherly solidarity. In this government there sit and work in agreement the foremost men of all three faiths and all three names, of all parties and all provinces of the kingdom. My government will work in full agreement with the representatives of the people and be responsible to them. . . . As king of a free and democratic people, I shall at all times unswervingly uphold the principles of constitutional government, which shall be the cornerstone of our state, created by the free will of the people. . . . A scheme will be introduced for a democratic constitution, conceived in the spirit of state unity and allowing for a wide administrative autonomy with guarantees for the widest political liberties and civic rights." Here may be found, in clear and unequivocal terms, the determination of the young ruler, on ascending the throne, to establish a constitutional monarchy, a responsible parliamentary

conception of his kingship and outlined the program of the first Yugoslav government, formed in the absence of a parliament, so the king reverted to his earlier practice and publicly set forth the reasons for the change of régime. "The hour has come," declared the monarch, "when, between the people and the king there cannot be and ought not to be an intermediary. . . . My expectations, as well as those of the people, that the evolution of our internal political life would bring order and consolidation into the country's affairs have not been realized. . . . Far from developing and reinforcing the spirit of national union and of the state, parliamentarism, such as it is, began to arouse spiritual disorganization and national disunion. My sacred duty is to safeguard by all means the national union and the state. I have decided to fulfill this duty to the end unhesitatingly. To maintain the union of my people and safeguard the unity of the state, the highest ideal of my reign, ought equally to be the most imperious law for me and for all. This is imposed upon me by my responsibility before the people and before history. . . . We ought to seek new methods of work and try out new ways. I am convinced that in this grave moment all—Serbs, Croats, and Slovenes—will understand the sincere word of their king and that they will be my most faithful helpers in the course of my future efforts, which tend solely to arrive, as quickly as possible, at the realization of the establishing of a state administration and organization which will best respond to the general needs of the people and the interests of the state."¹¹

Here, it will be recognized, is no mere dictatorial pronunciamiento, no chauvinistic manifesto of a military martinet, nor the oratorical embodiment of Fascist demagoguery. Here is presented the conception of direct monarchy, of the immediate relationship of king and people, of authority exercised in a fashion far more directly responsible than that provided by ministerial responsibility to the quarrelsome parliament with its cliques, its clubs, and its continual tergiversations.

system, a decentralized state administration, and a régime of juridical equality, all postulated on the acceptance of democracy as the fundamental characteristic of the new state. To be a citizen king, possessing no title of nobility, ruling no subjects, and acknowledging the popular will as the sole source of all sovereign authority—such was Alexander's conception of his function in the life of the Yugoslav state. For the text of the proclamation, cf. *Rijech S.H.S.*, January 7, 1919; for an English translation, cf. M. W. Graham, *New Governments of Central Europe*, pp. 639-641.

¹¹ *L'Europe Nouvelle*, *loc. cit.*

Owing to the need of regulating the matters in which the dissolved Skupshtina had shared, a short charter defining more precisely the position of the royal house, the rules of dynastic succession and regencies, was concurrently issued, and instructions were given to the new cabinet to guide both its general and its immediate conduct. Legislative and executive powers were, under the charter, to remain in royal hands, as were all matters pertaining to foreign relations, whether in war or peace.¹² While it is true that the people are nowhere explicitly mentioned in the charter save in relation to the announcement of royal succession, the derivative position of the monarch is clearly admitted. He is only the holder (*détenteur*) of authority, not its source, and is in no sense an autocrat. It is furthermore made clear in the royal admonitions to the ministers that a régime of complete legality is contemplated, in which the king and his ministers are the prime servitors of the nation.¹³

The new government has largely lived up to royal expectation. It has, within two months from its assumption of office, dissolved the political parties, speeded up the administrative machinery, weeded out the carpetbag functionaries, and toned up, in general, the entire national organism.¹⁴ The vitriolic and abusive press has returned to a more normal balance of opinion and has sidetracked personal politics, as all possibility of gain by further vituperation is gone. The vicious

¹² Law on the Royal Power and the Supreme Administration of the State, January 6, 1929, *L'Europe Nouvelle*, loc. cit.

¹³ "I invite you, gentlemen, to aid me by your efforts and by the conscientious execution of your duties in this great task for the welfare and prosperity of our kingdom, for a better future for our people, and never to lose sight of the fact that the safety of the state is the supreme law, and to serve the people the most sacred of duties." Elsewhere in the royal declaration emphasis was placed on the creation of "wholehearted confidence on the part of the people with regard to the authorities, the sentiment and the conviction that complete legality reigns in our state, and that absolute justice and equality are established in an enduring fashion." *L'Europe Nouvelle*, loc. cit.

¹⁴ "The reorganization of the civil service," says a Czech critic, "was perhaps the most essential step of all. Under the influence of party strife it had become corrupt, inefficient, and overstaffed. Now the number of employees is to be reduced, their qualifications are to be closely examined, and those educationally or morally unqualified who were found places by party friends are to be dismissed and the standard of service, hours of work, and general efficiency of the service are to be raised. Everyone admits that these measures are good and have been carried out with great fairness, determination, and dispatch." "The Situation in Yugoslavia," *Central European Observer*, vol. 7, p. 59 (February 1, 1929).

practice of "intervention," i.e., the use of parliamentary pressure to speed up administrative procedure on behalf of private individuals has been done away with. Whereas, after a decade of discussion, no advance had been made in the vital matter of codification and unification of laws, two months have sufficed under the present régime to produce a unified criminal law and accelerate progress in other branches of juridical reconstruction. Other tasks remain—those of restoring the national economy and accelerating needed social legislation—and these will amply test the statesmanship of the new régime. There is the inevitable question as to whether there can be a return to the parliamentary order,¹⁵ and, if so, when the propitious moment shall have arrived. But for the present, the old constitutional fetters that chained governments are gone. There are now no trammels laid down by caucuses, cliques, and legislative committees. "Set about your task and give proof of the greatest activity in all the branches of administration of the state, without letting yourselves be hampered by any of the difficulties inherent in the system of administration hitherto in force"—that has been the royal admonition.

What, in the last analysis, is the real nature of the new régime? It is not a military dictatorship, despite the fact that the prime minister is a military man; it is not a civilian dictatorship, for no royal servitor aspires to such a place; it is not a class or sectional dictatorship, seeking to reserve political power to any group or any region in the nation, since every part of the country and the various social classes are represented in the cabinet.¹⁶ In actual fact, the new government has discarded the dictatorship of petty factions in an impotent Skupshtina; it has done away with dictatorship by the Serbian political parties. It has brought into being, for the first time, a government genuinely made up of all parts of the Yugoslav people and serving the state as a whole with an efficiency and directness that are almost universally welcomed.¹⁷ If it is dictatorial in any sense, the present régime may be said to be the direct royal

¹⁵ Cf. Jacques Chastenet, "Le coup d'état royal en Yougoslavie," *Revue Politique et Parlementaire*, vol. 138, pp. 298-301 (February 10, 1929).

¹⁶ Albert Mousset, "Les événements de Belgrade: une nouvelle ère politique en Yougoslavie," *L'Europe Nouvelle*, 12th Year, No. 570, pp. 47-49 (January 12, 1929).

¹⁷ Cf. *The Near East and India*, vol. 35, p. 129 (January 31, 1929); *Central European Observer*, vol. 7, p. 62 (February 1, 1929); and *Le Temps*, January 9, 11, 1929.

dictatorship of a democratic ruler, based on the cardinal conception of popular sovereignty and of the immediate responsibility of the king to the nation for the execution of its mandates.

If the new régime succeeds in achieving national understanding among the three peoples of the monarchy, if it atones by its demonstrated superior efficiency for the political and administrative incompetence of the preceding régime, if it appeases by its economic foresight the basic wants of a nation in dire need of modernization, then the "dictatorship" of a democratic king working in strict collaboration with his people, and seeking expert advice for the solution of their problems, will have justified itself, not merely as a "constitutional parenthesis," but as a necessary stage in the realization of Yugoslav national unity.

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Greece Abandons Proportional Representation. Following the adoption by Greece of proportional representation in the general election of November 7, 1926, that system was abandoned in the last election, held on August 19, 1928, on the ground that it failed to give the country a strong and homogenous government. The earlier operation of "P. R." in Greece was set forth in a former number of this *Review*.¹ In a total of 286 seats, in the election of 1926, the Venizelist Republican group secured 144, as against the Antivenizelist Royalist group which secured 130, there being also a unit of nine Communists and three Agrarians elected to that Chamber. In view of the impossibility of either of the major groups forming a cabinet with the strong support of the Chamber, a coalition ministry was resorted to, and it worked with marked success so long as a compromise program was followed. This cabinet, under the leadership of the veteran statesman, Dr. Alexander Zaimis, himself not a deputy, was supported in the Chamber by the 106 votes of the Liberal Union, the 18 of the Republican Union, the 63 of the Popular Royalists, and the 54 of the Free Opinion Moderate Royalist party, thus having a total support of 241 votes, against 45 disunited and leaderless opponents. This coalition was able to heal the serious breach that had split the Hellenic nation since 1915 over the question of Greek participation in the World War or absolute neutrality. The ministry

¹ Vol. 21, pp. 123-127 (Feb., 1927).

was, furthermore, instrumental in bringing some order into the chaotic finances of the country. Finally, it succeeded in eliminating the military factor from the political life of the nation, putting an end to the military dictatorships that held sway from the middle of 1922 to the end of 1926.

Once these measures were accomplished, however, there arose in the cabinet serious differences among its various component parts. The Popular party was the first to withdraw from the coalition, being followed soon afterwards by the Republican Union. The two remaining groups were for a time strong enough to muster 160 votes against a split opposition, but parliamentary life became increasingly disorganized until in June, 1928, Mr. Eleftherios K. Venizelos, the founder of the Liberal party, announced his return to active political life, withdrew his confidence from the existing leaders of the Liberals, and shortly (on July 4) became premier, owing to the fact that the entire Liberal Republican faction in the Chamber had flocked to his standard.

The upshot of all this was the general election of August 19, 1928, which took place after a radical modification had been made in the electoral system. In view of the outcry of the old political parties, and especially of those of the Opposition, against proportional representation, M. Venizelos, immediately upon assuming power, secured the issuance of an edict whereby the old plurality system was again put in force, with some slight changes favorable to the cabinet but accepted also by the Opposition. As against 961,437 votes cast in the election of 1926, there was a total of 1,015,013 votes cast in that of 1928, in a population slightly less than seven million, and with adult male suffrage. Of this number, 686,463 went to the Liberal Republican groups, led by Venizelos, while 328,550 went to the Antivenizelist Royalist Opposition. The total number of seats having been reduced to 250, following an ingenious reapportionment by Venizelos, the election resulted in 225 Government candidates being returned as against a mere 25 of the Royalist Opposition. The entire Free Opinion party in the Chamber, with the exception of a single member, was wiped out, as was also the Communist party, now outlawed in Greece. It would appear that in 1926, under the "P. R." system, the Royalist Opposition, having polled forty-four per cent of the total vote, secured the same proportion of seats in the Chamber, whereas the same party under the plurality system of 1928, having obtained thirty-two per cent of the total vote, has today only ten

per cent of the representation in the Chamber. Thus, 684,463 voters are represented in the Chamber by 225 deputies, whereas 328,550, almost one-half of the majority, have only 25 seats. The majority party is giving the country strong and steady government. But the lack of a sufficiently vigorous Opposition is felt by the cabinet. This has repeatedly been stated by Premier Venizelos himself. The majority has, furthermore, treated the minority in the Chamber with marked consideration.

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NEWS AND NOTES

PERSONAL AND MISCELLANEOUS

Compiled by the Managing Editor

By vote of the Executive Council, the twenty-fifth annual meeting of the American Political Science Association will be held at New Orleans on December 27-30. The chairman of the committee on program is Professor Clyde L. King, of the University of Pennsylvania.

Dr. Charles A. Beard lectured for several weeks at Harvard University in March and April under the auspices of the department of government.

Dean Herman G. James, of the University of Nebraska, has accepted the presidency of the University of South Dakota.

Professor Jesse S. Reeves, of the University of Michigan, delivered two lectures at Northwestern University in February on Paraguayan affairs, including the territorial dispute between Bolivia and Paraguay, and also a series of lectures at Union College in February and March on aspects of international administration.

At Columbia University, Professor Howard L. McBain has succeeded Professor Frederick J. E. Woodbridge as dean of the graduate faculties, and in turn has been succeeded by Professor Lindsay Rogers as executive officer of the department of public law and jurisprudence.

Professor Edward S. Corwin, of Princeton University, who has been in China this year as visiting professor at Yenching University, delivered a lecture in December before the Chinese Social and Political Science Association on "The Democratic Dogma and the Future of Political Science."

Professor John Dickinson, of Princeton University, has resigned to become professor of law in the law school of the University of Pennsylvania, where he will be in charge of the courses in constitutional law, administrative law, and public utilities.

Dr. John Mez, of the University of Arizona, has been appointed to a professorship of economics and political science at the University of Oregon.

The summer session staff of the School for Citizenship at Syracuse University will include Professors O. C. Hormell, of Bowdoin College, and C. A. Berdahl, of the University of Illinois.

Professor Ralston Hayden, of the University of Michigan, will give courses on English government and the government of dependencies at the University of California in the coming summer session.

Professor Leland M. Goodrich, of the department of social and political science at Brown University, is chairman this year of the Rhode Island branch of the Foreign Policy Association.

Professor Charles M. Kneier, of the University of Nebraska, will give courses in American government and municipal government at the University of Illinois during the summer session.

Mr. Roy E. Brown, graduate assistant in political science at the State University of Iowa, has been appointed assistant professor of political science at the University of North Dakota.

Professor K. R. B. Flint, head of the political science department at Norwich University, has been made a member of the executive committee of the recently formed New England Planning Commission.

Dr. Lloyd M. Short has been promoted to a full professorship of political science and public law at the University of Missouri, and has also been made assistant dean of the graduate school.

Mr. Harold H. Sprout, formerly of Miami University and now completing his graduate work at Wisconsin, has been appointed assistant professor of political science at Stanford University. He will be in charge of Professor Graham H. Stuart's courses next year while Dr. Stuart is on leave of absence.

Professor Louis B. Schmidt, head of the department of history and government at Iowa State College, will give courses at the University of Alabama during the first term of the summer session. Dr. Herbert C. Cook has been made assistant professor of government at Iowa State College.

Dr. Martin L. Faust, assistant professor of political science at the University of Pittsburgh, has been appointed associate professor of political science and public law at the University of Missouri. Dr. Faust will have charge of courses in municipal government and

administration. Mr. William L. Bradshaw, instructor in political science and public law at Missouri, has been granted leave of absence for 1929-30 in order to complete his graduate work at the State University of Iowa.

Dr. O. W. E. Cook has been added to the department of political science at the University of Southern California. He will offer courses dealing with Latin America and the Orient. Dr. John E. Harley, associate professor of political science at the same institution, has returned after seven months of study in Europe, principally at the Institut Universitaire des Hautes Études Internationales at Geneva.

Professor Carl J. Friedrich has received a grant from the Milton Fund at Harvard University to aid in preparing a new Latin (and possibly an English) edition of Johannes Althusius' *Politica Methodice Digesta*. Professor Miller McClintock has received a grant from the same source for a preliminary study of municipal airport administration.

Dr. George H. Ryden, head of the department of history and political science at the University of Delaware, has been promoted to a full professorship. He is at present working in the field of international relations in the Pacific, with special reference to the foreign policy of the United States in relation to Samoa. Yale University awarded him the John Addison Porter prize of \$500 for an essay in this field in June, 1928. The Caesar Rodney letters, which are in the possession of the Historical Society of Delaware, will be published by that organization, some time during the present year, under Professor Ryden's editorship.

Professor Quincy Wright, of the University of Chicago, is lecturing at the Brookings Institution during the spring quarter. He will return to the University for the summer quarter, and will proceed to Kyoto in the autumn for the meeting of the Institute of Pacific Relations. Professor Harold D. Lasswell has returned from a nine months' residence in Vienna and Berlin, where he has been continuing his studies in the psychiatric approach to political behavior. Dr. Carroll H. Woody has recently completed a study of referendum votes under the local option system for the regulation of the sale of intoxicating liquors, and has begun a study of the Frank L. Smith campaign in Illinois.

After conferring with officials of the American Library Association, and with the aid of large numbers of teachers of international subjects in American colleges and universities, the World Peace Foundation, of Boston, has undertaken the preparation of lists of elementary, intermediate, and advanced books on a wide range of international topics, such lists to be placed at the service of libraries for guidance in book purchases in this field.

The American Council of Learned Societies has created a standing committee on the promotion of Chinese studies. The chairman is Dr. Berthold Laufer, curator of the anthropological section of the Field Museum of Natural History, Chicago.

The Local Community Research Committee at the University of Chicago has in progress a study of organized crime, in coöperation with Northwestern University, the Institute of Criminal Law and Criminology, and the Chicago Crime Commission. Studies in regional planning are progressing, with two units complete.

The University of Chicago announces the affiliation of the Bureau of Public Personnel Administration, hitherto located at Washington, D.C. The Bureau will hereafter occupy quarters on the University of Chicago campus. Mr. Fred Telford, director of the bureau, has been appointed lecturer in the department of political science. As is mentioned elsewhere, the secretariat of the International City Managers' Association will also be moved to Chicago, and the secretary, Dr. Clarence E. Ridley, has been appointed associate professor of political science in the University.

The Social Science Research Council has recently appointed an advisory committee on public administration. The members are: Leonard D. White, University of Chicago, chairman; Arthur W. Macmahon, Columbia University; Carl J. Friedrich, Harvard University; Luther Gulick, New York Bureau of Municipal Research; Walter F. Dodd, Yale Law School; Stephen Story, city manager of Rochester, New York; Oliver Short, civil service commissioner, Baltimore; John Dickinson, Princeton University; L. J. O'Rourke, director of personnel research, U. S. Civil Service Commission, Washington, D.C.; H. S. Person, Taylor Society, New York City; Morris L. Cooke, Philadelphia; Lewis Meriam, Institute for Government Research, Washington, D.C.; and E. E. Hunt, Department of Commerce, Washington, D.C.

On recommendation of the committee on grants in aid, the Social Science Research Council has made grants to assist research projects as follows: (1) Professor Joseph P. Harris, University of Wisconsin, for a study of the administration of elections in the United States, and (2) Professor Oliver P. Field, of the University of Minnesota, for a study of the effect of unconstitutional statutes. Professor Harris will carry on his studies with additional financial aid from the Institute for Government Research and the University of Wisconsin. He will be on leave from the University during the first semester of 1929-30.

A Southeastern Political Science Conference, held at Atlanta, February 11-12, devoted sessions to the discussion of the present political situation in the South, state administrative reorganization, local government in the South, taxation, international relations, political science curricula, and studies in practical politics. The Conference was placed on a permanent basis, with Professor Cullen B. Gosnell, of Emory University, as chairman for next year. A Southeastern Political Science Quarterly is projected, with Professor Philip Davidson, of Agnes Scott College, as temporary managing editor.

The Dodge lectures on responsibilities of citizenship, given at Yale University in February and March, included addresses on administrative problems of immigration, prohibition, criminal justice, and superpower, given by Messrs. R. C. White, James M. Doran, Raymond Moley, and O. C. Merrill, respectively. The Sherrill Foundation lectures were given in March by Hon. Charles E. Hughes on Pan-American peace plans.

The twenty-third annual meeting of the American Society of International Law took place at Washington on April 24-27. A round table conference on the conventional codification of international law followed a report of the special committee on that subject, presented by Professor Jesse S. Reeves, of the University of Michigan, and a round table on publications for the study of international law, conducted by Professor Manley O. Hudson, of the Harvard Law School, followed a report by Dr. Dennis, of the American University, for the Society's committee on enlargement of State Department publications, and a discussion by Dr. Tyler Dennett of governmental publications for the study of international law. Dr. James Brown Scott addressed the body on the treaty between Italy and the Vatican,

Professor Roland S. Morris on the Pact of Paris, and Mr. Chandler P. Anderson on the scope and character of arbitration treaties; and the president of the Society, Hon. Charles E. Hughes, in his opening address gave the usual survey of international developments during the year.

Foreign scholars and experts who will participate in the ninth annual meeting of the Institute of Politics at Williamstown during the coming summer include Dr. Hjalmar Schacht, president of the German Reichsbank; Professor André Siegfried, of the School of Social Science, Paris; Professor William E. Rappard, of the University of Geneva; Count Giovanni Elia, of Rome; and T. E. G. Gregory, professor of banking at the University of London. The increasing economic competition between nations will be a principal topic for consideration, but other subjects will be the limitation of armament and the foreign relations of the United States. Two new members of the advisory board of the Institute are Mr. Rowland W. Boyden, of Boston, and Professor George H. Blakeslee, of Clark University.

At its annual meeting in February the fellowships committee of the Social Science Research Council awarded twenty-seven research fellowships, distributed among the social sciences as follows: anthropology, three; economics, five; history, six; political science, three; psychology, three; sociology, three; geography, one; law, two; miscellaneous, one. The three fellows selected from the applicants in political science are Professor John G. Heinberg, of the University of Missouri, who will study the personnel of French cabinets since the establishment of the Third Republic; Professor James K. Pollock, Jr., of the University of Michigan, who will continue his investigations of the use of money in English, French, and German elections; and Professor Amry Vandembosch, of the University of Kentucky, who will go to London, the Netherlands, and the Dutch East Indies to study Dutch colonial policy and administration.

The Institute for the Study of Law at the Johns Hopkins University is preparing, with a view to publishing, a survey of all studies and research in or related to law now in progress or completed in 1928. The term "research in law," is to be interpreted in its broadest sense, so as to include all studies, writings, or investigations, large or small. The object of this survey is to present a picture of the work of all groups whose studies are concerned directly or indirectly with

any phase of law or involve the use of legal materials. It is believed that such a record of studies will serve to make them available to a greater number, and will help prevent duplication and overlapping of work in the future. A questionnaire has been sent to faculties of law schools and to faculties in economics, political science, sociology, and psychology of the universities in the Association of American Universities, as well as to organized research bureaus, foundations, and commissions. Persons who have not received this questionnaire and are doing work which they believe should be included in this survey are requested to write to the Institute for the Study of Law concerning their work, and to suggest names of others whose work they believe should be included. As the report is to be completed in June, an early reply is necessary.

Yale University has received gifts and subsidies representing a capital of \$7,500,000 for the establishment of an Institute of Human Relations in which the University's resources for the scientific investigation of man's behavior from the physical and mental, the individual and the social, viewpoints will be concentrated. "The Institute" says the formal announcement, "is designed to bring together sociologists, biologists, psychologists, and economists, who will combine with their colleagues in such applied fields as law, medicine, and psychiatry to correlate knowledge of the mind and body and of individual and group conduct, and to study further the inter-relations of the many factors influencing human actions. Yale intends to make a study of human behavior in all of its aspects one of the University's major objectives. All of the departments of the natural and social sciences will coöperate so far as possible in this plan, with the Institute as the point of contact between them and as a center for their graduate and research work. Every man on the staff of the Institute will hold an appointment in a fundamental University department, in order that the work of the Institute may be articulated with that of the University as a whole. This will make possible a coördination of related activities dealing with man's welfare, and a concentration of knowledge and technique such as has never before been attempted in the solution of complex problems of human relations. Such close affiliation with the professional schools, as well as with the fundamental departments of study, will encourage students to think of their professions as having to do primarily with human beings, rather than with test tubes, statute books, codes or creeds." Plans are being drawn for a special building for the Institute.

BOOK REVIEWS AND NOTICES

BY A. C. HANFORD

Harvard University

Group Representation Before Congress. BY E. PENDLETON HERRING.
(Baltimore: Johns Hopkins Press. 1929. Pp. xviii, 309.)

There is an old joke to the effect that two Germans cannot meet without founding a club. It might also be said that two Americans cannot agree on anything without starting an organization. From the cradle to the grave, from swaddling clothes to winding sheet, we are organized. We are not only political animals in the Aristotelian sense, we are factional animals as well. Where is the American who does not "belong" to some organized group? Thirty millions of us "belong" to some eight hundred secret so-called fraternal orders, zoölogical and otherwise. Our fears are organized and our hates. We are organized to work and to play, to worship and to deride. There is an American Bankers Association and a Hodcarriers Union, an Association for the Advancement of Colored People and the Ku Klux Klan, the Lord's Day Alliance and the Association Opposed to Blue Laws. There is even a National Circus Fans Association. The individual no longer counts. As Mr. Herring remarks "this complex society has put the individual in the chorus and instructed him to watch the leader."

Politics is, of course, but one of the activities in which these multitudinous groups engage. It is with their political activity that Mr. Herring is concerned. Washington is overrun with representatives of innumerable groups, from the American Agricultural Association to the Zionist Organization Union. "The cast iron dome of the Capitol has strange magnetic powers. It is the great hive of the nation to which each busy big and little association sooner or later wings its way." No conclusive statement as to the total number of organizations so represented can be given. Mr. Herring lists about five hundred and says there are easily a thousand. Their membership varies from a mere handful to millions. Hundreds of them are fakes whose sole *raison d'être* is the collection of dues and subscriptions. Some of them, like the National Association of Manufacturers, the Anti-Saloon League, and the Chamber of Commerce, speak with the voice

of Stentor, while others barely squeak. The weaker sisters, like Chanticleer, go on the theory that when they crow Congress cringes, although their squawkings have as little to do with legislation as the cock's crow with the dawn. But when the "big fellows" speak it behooves congressmen to listen, and an order from the Bliss Building may be as effective as one from the White House. The Monday Lunch Club has become almost as important as the White House breakfasts.

The methods of these organizations are not those of the old time lobby; they have become purified and "glorified." Pressure and propaganda are the Big Berthas in their artillery. They publish bulletins and issue press releases; they furnish boiler plate to the pauper press; they give expert advice to committees and government bureaus; friendly get-togethers of political patrons and statesmen are organized; and where gentler tactics fail they stir up the hornets' nest of voters to plague stubborn solons. When letters, telegrams, memorials, and resolutions by the hundreds and the thousands pour in, congressmen's nerves begin to twitch. They know that some pressure-group is on the job, that this outpouring is not spontaneous; but they hearken none the less. These groups keep the home folks advised concerning the doings of their representatives; they are the eyes and ears of the nation. They establish headquarters in Washington, not only because the government is there, but because Washington is the sounding board of the republic.

"What's good for business is good for the country," is the slogan of the Chamber of Commerce. With slight modification, it might serve for most of these associations. It is a common failing of men to believe that what's sauce for the goose must be sauce for the gander.

We may bewail this prevailing pluralism and cry out for the "good old days" when America was not an organocracy, when there was "an American people equal under universal suffrage animated with a national consciousness." But we know when we do so that we are shedding crocodile tears. Since the beginning of our history we have been governed by groups. Government is everywhere oligarchical, and only a Rousseauist romanticist believes in a "general will" on anything except the necessity for common rules of procedure. Public opinion in any other sense than organized group opinion remains a phantom. There may have been fewer organized minorities in the old days; there may have been less lobbying; but it is a difference in degree, not in kind.

Mr. Herring is absolutely right when he says that these associations "represent a healthy democratic development. They rose in answer to certain needs. . . . They are part of our representative system. . . . There is no turning back. These groups must be welcomed for what they are . . . [They] must be understood and their place in government allotted, if not by actual legislation, then by general public realization of their significance." A democracy which denies freedom of association and discussion soon dies in dictatorship.

This is an absorbing book. It is scholarly, it is eminently readable, it is indispensable to those who would understand the political scene. Here is the substance and reality of the process of government.

PETER H. ODEGARD.

Williams College.

Congressional Investigating Committees. BY MARSHALL E. DIMOCK.
(Baltimore: Johns Hopkins Press. 1929. Pp. 182.)

Congressional Investigations: A Study of the Origin and Development of the Power of Congress to Investigate and Punish for Contempt.
BY ERNEST J. EBERLING. (New York: Columbia University Press. 1928. Pp. 452.)

These are doctoral dissertations on a subject of perennial interest to historians and politicians and, lately, of special concern to constitutional lawyers and political scientists. Both authors attempt to show how the inquisitorial power was established and used, challenged and defended, fortified and judicially reviewed. Their purpose is to appraise the position of investigations in the processes of the federal government.

Dr. Dimock classifies his material and organizes his study according to the triple functions which he believes investigations perform: (1) to determine the qualifications, conduct, and privileges of members of Congress; (2) to aid in law-making; and (3) to control the executive departments. After three chapters illustrating investigations which serve these purposes, he reviews the leading federal cases in which the investigative power has been challenged and suggests four tests of the validity of an inquiry. Then he contrasts the investigative powers of congressional committees and administrative commissions and discusses the incidence of committee procedure upon the constitutional liberties of witnesses. In his last chapter the author criticises investigations on seven counts, estimates their influence on

public opinion, and prophecies more frequent inquiries looking toward legislation, but fewer committee investigations of the executive, thanks to the inquisitorial powers of the comptroller-general. No mention is made of the possible restraining effect on the comptroller of the recent Myers decision (272 U. S. 52). Dr. Dimock's comments on the Supreme Court's decision in *McGrain v. Daugherty* (273 U. S. 135) are particularly interesting. In this decision he sees the seeds of a more liberal construction by the courts of the necessity for particular inquiries. It paves the way, he believes, for judicial recognition of the validity of the grand jury rôle of congressional investigations.

Dr. Eberling classifies legislative investigations as Dr. Dimock does, but makes his book chiefly a chronological account of congressional practice, procedure, statutory development, and judicial review. The content, problems, and findings of both studies are necessarily similar, since the authors have covered much the same ground, used the same materials, and written since the Supreme Court spoke in *McGrain v. Daugherty* (1927). They agree that the inquisitorial power originated in seventeenth-century England, was assumed by the colonial assemblies and state legislatures, continued to be exercised by both houses of Congress in hundreds of cases, was fortified by statutes, and is sanctioned by the Constitution and courts within certain limits. They agree that the power often runs counter to individual liberties, in which case public necessity should prevail, and they find that investigations fulfill necessary functions and so serve a salutary purpose. Both studies are well documented.

The authors differ in the way in which they have organized their materials and in their sense of professional propriety. Dr. Dimock tells the story in 175 pages and Dr. Eberling takes 423 pages. The former begins with a chapter comparing congressional investigations with those in England, France, and Germany, and concludes with a forecast; such considerations the latter omits. Dr. Dimock's book is the more succinct, the better balanced, and the more systematically organized of the two. Frequent italicized captions demarcate the points in his argument, and only the most instructive and interesting precedents are put in evidence to support it. Dr. Eberling's book varies in length of chapters from 18 to 130 pages. It devotes only two pages to English origins, discusses the details of 81 congressional precedents, six statutes, and 25 court cases in tedious repetition of the same points, and gives extravagant space to particular investigations. Out of 423 pages of text, an estimate indicates that material equivalent

to 129 pages is quotation of congressional debates, revised statutes, and judicial opinions. The book is a chronological sequence of cases strung along, without logical unity or rigorous analysis, on no clear and consistent thread. Furthermore, comparison of Dr. Eberling's book with articles published in 1926 and 1927 by Professor James M. Landis¹ and the reviewer² reveals that the author has appropriated portions of both articles without quotation or acknowledgment. The language is either identical or too similar to admit of doubt.

So far as contributions to the sum of recorded knowledge are concerned, both of these studies are, in a sense, supererogatory in that they cover ground which had already been adequately covered in published articles. The original research on parliamentary precedent for legislative investigations was done by Professor Landis; that on colonial precedents by Professor Potts;³ and that on congressional precedents by Professor Landis and the reviewer. Nevertheless, these studies represent much diligent research and include some good comment and criticism.

GEORGE B. GALLOWAY.

Philadelphia, Pa.

Readings in Public Opinion: Its Formation and Control. BY W. BROOKE GRAVES. (New York: D. Appleton and Company. 1928. Pp. xxxiv, 1281.)

Political science is showing definite signs of breaking away from its earlier mistress, the law. The evidence of this is that it is starting an affair with another, psychology. To the present writer it seems that, during its present stage of transition, political science should not tie itself too closely to any one discipline, but should deliberately adopt promiscuity, or, in more academic terms, eclecticism. Politics is *not* psychology, but psychology can give us aid in interpreting politics. The political scientist, in a word, must not turn psychologist, but should collect and classify *political* facts, in the light—when it serves his purpose—of psychological theory.

¹ "Constitutional Limitations on the Congressional Power of Investigation," *Harvard Law Review*, vol. 40, p. 153 (December, 1926).

² "The Investigative Function of Congress," *American Political Science Review*, vol. 21, p. 47 (February, 1927).

³ "Power of Legislative Bodies to Punish for Contempt," *Pa. Law Review*, vol. 74, pp. 691, 780 (May-June, 1926).

Closely connected with the partial transfer of affection referred to is the multiplication of books on public opinion. A few years ago we had little besides Lowell and Dicey, and somewhat later, Graham Wallas. But the recent vogue of psychology and the gigantic propagandas of the World War have now given us quite a literature of the subject.

In this literature Professor Graves' bulky tome will find a useful place. It is a sort of handbook or manual of the subject. For, in addition to short selections on each of a wide variety of topics, there are, at the end of each chapter, lists of "review questions" and of "topics for further investigation." In the latter the reader is actually overwhelmed with references. These will lead him not only into psychology, but as well into the detailed processes of politics and social intercourse.

It seems to the reviewer a merit that, in a work of this sort, the author has not taken sides as between the opposing schools of psychology; that he has not attempted to isolate *political* public opinion with any artificial sharpness from the general problem; and that he has not confined his material to "general principles," but has opened up a wealth of concrete detail. For in the present state of psychology, the political scientist may get clues from all schools without becoming a partisan of any. And while "public opinion" is a term as yet only vaguely defined, it seems even now clear that its political aspects merge with the aspects less immediately related to governmental policy, and that its formation and control involve so many variable factors that the attempt to reduce it to a "few simple principles" would result in misleading over-generalizations. Even the brilliant studies of Lippmann cannot tell the whole story.

For the teacher, this book furnishes a useful source of suggestion and illustration. The advanced student, also, might profit by the exercise of preparing, on the basis of this book, a more generalized picture of his own, with an attempt to weight the factors involved. For formal classes, the work could be used as a basic text, provided it did not overwhelm the immature undergraduate, who usually has less background than is commonly assumed.

JAMES HART.

Johns Hopkins University.

Political Behavior. BY FRANK R. KENT. (New York: William Morrow and Company. 1928. Pp. x, 342.)

Walter Lippmann is reported as saying that Frank Kent "knows more about political behavior than anyone writing today." Certainly he knows a great deal. Kent is a journalist and displays the strength and weaknesses of his profession. He has an engaging style, a tendency to dogmatize which is at times irritating, and a knack for repeating himself without seeming to do so. Thus there is very little in this book which is not to be found in *The Great Game of Politics*. If that book be regarded as Kent's *pièce de résistance*, this one may not improperly be called the dessert.

Here he sets forth his conclusions about political behavior in the United States. They are, briefly, as follows. All except a half-million persons (and that, he says, is a generous estimate) are political nincompoops. Brains and character are not necessary in politics; in fact they may be a distinct handicap. Party regularity is the first law of success. To be really independent is to commit political hari-kari. As Kent said in *The Great Game of Politics*, "Nothing short of a political tidal wave or revolution can carry an independent candidate to success." The so-called independent voters, "always swinging between the two big parties," are for the most part morons. He would agree with Ostrogorski that their "independence" is prompted "by a feeling akin to that of the Buddhist, who beats his idol when it has not granted his prayer." Political machines are maintained through a judicious distribution of loaves and fishes. Only occasionally when the machine is in a tight place is it necessary to "dress up the ticket" with a "fat cat" who is prepared to pay the bills and give the other candidates a free ride. Having secured the support of "the boys in the back room," the candidate is instructed how to garner the votes of the "moronic masses" on the fence. He should not argue; the thing to do is to say nothing while seeming to say much—it's bunkum the voters want. Where the voter cannot be fooled, he should be frightened. He likes, above all, a good show or shiver. When your opponent hurls embarrassing facts and questions at you, keep silent or talk about something else. "Never handle a hot poker on the front porch." Dozens of illustrations come to mind: "Bill" Thompson's famous argument with the rats "Fred" and "Doc"; John F. Hylan's hobgoblin the "interests"; even the high-hatted Hoover with his "noble experiment" and that holy of holies, the tariff.

There are other rules. It does not pay to buck the "business interests." Don't be too pernickity about the corrupt practices acts.

Politics is beyond good and evil. In short, "play the game." With plenty of watchers (who incidentally are voters) at ten dollars a head, a bulging treasury, friendly reporters, a kindly face, and an unlimited supply of humbug and hokum, you stand to win.

America, according to Kent, is corrupt and contented; an ounce of prosperity will leaven a lump of corruption and turn the dross to sheen. Women in politics are no better than men, their sole influence being to increase the power of the machine (a statement which, with many others, must be taken with a liberal sprinkling of salt.) But in spite of an assumed disdain for "dirty politics," most Americans swarm into the game as flies gather round treacle.

This book should be read for entertainment if not instruction. It is not so thorough as Ostrogorski, nor so penetrating as Bentley, nor so profound as Michels, but it is too good to miss.

PETER H. ODEGARD.

Williams College.

State Government. BY WALTER F. DODD. Second edition. (New York: The Century Co. 1928. Pp. xiv, 604.)

Although described as a second edition, this volume is not merely a revision but is in fact a new book. Not only has the subject matter been brought down to date, but much of the material has been rearranged and the bulk of the book rewritten. Those who used the original edition found it to be an excellent text-book. The new edition is even more satisfactory. For example, the subject matter which appeared in Chapter III of the original work on "The State and its Subdivisions" has been moved to the latter part of the book and tied up with the other chapters on local government and the state, thus avoiding needless repetition and improving the unity of presentation. The number and geographical spread of typical examples have been increased, and the style made more lively and readable by the almost complete rewriting of the text.

Among the outstanding features of Professor Dodd's book are the treatment of state government in close relationship to the federal government and to the local subdivisions through which a large part of the states' business is done; the emphasis on the activities of the state as a going concern, especially its social activities; the attention to basic principles; the careful discussion of state constitutions, conventions, and constitutional development; limitations on state governmental power with particular reference to the problems

of judicial review; the serious problems arising out of inequalities of representation, especially the discrimination against cities, which Professor Dodd was one of the first persons to point out; the analysis of the work of state legislatures; and the granting of subordinate powers of legislation to administrative bodies as "one of the great developments of the future in state government." The chapter on "The Task of Administering Justice," in its revised form, remains one of the best short discussions known to the reviewer of the need, problems, and methods of readjusting judicial machinery and processes to meet the strain of modern conditions.

As in the earlier edition, the author emphasizes actual problems for immediate and future solution, and supplements the text with detailed notes at the end of each chapter giving critical bibliographical information and throwing out additional problems for further study.

The book has been enriched by the broad experience of the author as a teacher, first in the Middle West at the Universities of Illinois and Chicago and later in the East at Yale, as director of the Illinois Legislative Reference Bureau, which brought him into close contact with both the legislature and the constitutional convention of that state, as the director of a survey of administrative reorganization in Ohio, and as a practicing attorney at law.

A. C. HANFORD.

Harvard University.

Making the Fascist State. BY HERBERT W. SCHNEIDER. (New York: Oxford University Press. 1928. Pp. xii, 392.)

The New Fascist State: A Study of Italy under Mussolini. (By E. W. HULLINGER. (New York: Rae D. Henkle Company. 1928. Pp. xiv, 298.)

Fascism: A Challenge to Democracy. BY M. W. HOWARD. (New York: Fleming H. Revell Company. 1928. Pp. 183.)

In spite of their titles, these three books have very little in common. The first is, for serious study of Fascism, incomparably the best of the lot. The second is a good popular exposition. The third is uncritical eulogy.

Mr. Hullinger's book is the work of a journalist and lecturer, partly reprinted from the *New York Times*, *Current History*, and other periodicals, pleasantly and popularly written, covering much of the ground that Mr. Schneider leaves out, but necessarily rather superficially.

The author's observations on the organic defects of the Italian nation, on the Fascist economic state, on Mussolini himself, on relations with the Vatican, and particularly on "Italy's literary eclipse" under Fascism are all fresh and interesting, if not startlingly novel.

Justice may be brief and summary for the third work. It is by a Mr. M. H. Howard, who is, we are informed, an ex-congressman from Alabama, and who has come, apparently since he became "ex," to see the shortcomings of democracy. It is a defense of "pragmatism against dogmatism" and a plea for the genius who is fighting against race suicide "cunningly disguised as birth control"—in short, another work in praise of Mussolini, written in the "great-man" tradition of Carlyle, but without either eloquence, insight, or information to carry off its aim. The quotations, fortunately long, are the best part of the book. The author's judgments, both on democracy and on Fascism, are superficial and wholly personal. The book abounds with overstatements and misstatements of Fascist achievements for which no evidence is offered—a thoroughly stupid performance.

Making the Fascist State was done under the auspices of the Social Science Research Council by Professor Schneider, one of John Dewey's most promising disciples. The record of events and doctrines which it contains is the completest we have had in English—almost too complete in that the author has hardly selected for emphasis any of the numerous sources of the Fascist current. He has been perhaps too intent to get them all in. However, he has documented his work with the most valuable notes and appendices, generally preferring to let the Fascists speak for themselves. Although it is more a source book than an interpretation, it stands, at the present time, as the most useful work yet published in English on Fascism. Compared with recent foreign publications, it has not the juridical and political competence of Luigi Francesco Ferrari's (professor at Louvain) recently published *Le Régime Fasciste Italien* (Paris, Editions Spes, 1928), or the background of economic forces and financial information displayed by Silvio Trentin's *L'Aventure Italienne Legendes et Réalités* (Paris, Presses Universitaires, 1928).

There are two disappointments in this useful book. The reader is promised in the Foreword "enough of the political history and economic problems to make clear how the *fascisti* intended their ideas to be applied"; and he is led to hope for the fruits of assistance from "distinguished Italians, ex-ministers, senators," and others of such a nature that it is not "prudent under the present political cir-

cumstances" to name them. If the book really threw light on the moving forces—industrial, agricultural, financial—behind the scenes, or divulged information that Mussolini might be annoyed at having blazoned forth publicly by his opponents, it would fill a long-felt want. But none of Mr. Schneider's assistants need tremble: there are few revelations which have not been made boastfully by Mussolini or other Fascist apologists, unless it be the revelation of grafting by members of the Fascist directorate (p. 117). There is not even a hint that Fascism was, or even that it may have been, after 1920, a somewhat puppet movement, whose lack of "fixed principles" and whose new emphasis on a gospel of work and discipline perhaps corresponded with a change to strings pulled by subsidies from industrialists and bankers. Mr. Schneider does show how the various changes in front toward industrialists and labor and the "battles" of the lira, coal, wheat, etc., corresponded to political needs and to party changes. But the external loans which Fascism, under the benevolent Volpi, multiplied to the point of creating a debt item whose service strains the national economic mechanism beyond bearing and the various "mysteries" of Fascist finance and of stabilization of the lira are all accepted at the face valuation given by Fascists, and are accorded, at that, hardly a casual mention. Mussolini's sudden "piping down" on his previous jingo strain, which paralleled in so interesting a way the credit from a foreign banking consortium to peg the lira, passes unnoticed.

There is, on the other hand, an excellent account of the external reasons for Mussolini's change of program in terms of so many adjustments to the tactical and political situation necessary to increase his power. That flair for sensing a change of the popular wind has been, no doubt, the dominant note in Mussolini's career. But the direction in which that power is to be used is described only as far as to note that it obviously drags the government farther and farther along the road toward price-fixing and state regulation of rents, landholding, shipping subsidies, and rates, as well as wages (pp. 209 ff.). This summary conclusion is odd, to say the least: "It is idle to argue whether the state has been turned over to economic interests or the interests subjected to the state. The right wing of the party insists that the corporate state is a glorified individualism; the left wing thinks it to be the triumph of the people 'over the threatened capitalist insurrection.' The simple fact is that the political and economic orders are being fused into the corporate state and government is frankly becoming political economy."

One may suggest to the author a very pragmatic test of whether the Fascist corporative state, depicted on loan posters as a bee-hive industriously toiling, is purely an "economic state": *Who gets the honey?* There is nothing in this book to answer this very interesting question about the relation of doctrines to facts, although a comparison with the equally "economic state" of Soviet Russia would have made it clear. In short, politics can never become pure economics, since there is no such thing as pure economics in political practice.

The doctrines have, Mr. Schneider points out, changed mightily since Fascism ceased to be a movement and became a government. In passing, it might be noted that the influence of d'Annunzio and the constitution of Carnaro on the new "corporative state" seem to be underrated by Mr. Schneider. As others have also noticed, the pragmatic Machiavellian doctrines of Fascism changed character to the almost mystic idealism of the corporative state. Some mention of the obvious lessons which have been learned from Russia, too, might have been worth while.

The "corporative" structure, which Mr. Schneider (again following previous interpretations which he does not find it necessary to mention) feels is bound to conflict with the "corporative" state now actually in party hands, need not be taken as seriously as the author seems to take it. It is an imposing façade which—since Mr. Schneider wrote—seems to be in the course of being torn down to Rossoni's foundations and rebuilt to order by the newly reconstituted Grand Council. The nature of "coöperation" between capital and labor, aside from the conflicting currents of Mussolini's leanings and the equally puzzling decrees of the labor courts set up under the Labor Charter, does not yet appear. Mr. Schneider's analysis would hardly suggest what appears to be the fact, that the syndicates are under completely centralized Fascist control.

The main themes of the book, so far as there can be said to be main themes, have now hardly any claims to novelty. It is in documenting them that Mr. Schneider has performed a real service.

On the whole, the book is written with wit and insight. Given the gentle cynicism shown by Mr. Schneider, and given his professions of clinical method, it is not to be expected that he would offer any judgments. Still, in the selection of his facts, and in their exposition, one might wish that he had given more basis for judgments, economic and political.

From the wording of his paragraphs it is impossible to tell whether his conclusions as to the Fascist mind and the heroic breed are his own judgments or simply expositions of Fascist claims. If they are the former, they ought to be in some measure compared with the mind of Italians as a nation. How foreign a phenomenon is Mussolini? Or, if he is quintessentially native, is he an operatic flame-up or a Solon re-inspiring a nation? Mr. Schneider has offered neither to stand in judgment nor to furnish the facts on which a judgment might rest—aside from a very uncritical chronicle of Fascist words and deeds.

The book is perhaps too cluttered with trivial figures and too little interpretative of the real protagonists. It shows no acquaintance with the useful commentaries afforded by the anti-Fascist literature and journals on the Continent published by exiles from Italy. Some of its facts are uncritically accepted, and all of them, it would appear, were obtained in Italy. Nevertheless, the volume serves as a most useful and welcome addition to the growing literature—most of it useless—on Fascism; and it does succeed measurably well in showing the “minds of Fascists” by letting them speak for themselves. Its documents in translation, in the text and the appendices, are in themselves a sufficient attraction to students of political science to make its publication a welcome event.

W. Y. ELLIOTT.

Harvard University.

The Government and Administration of Germany. BY FREDERICK F. BLACHLY AND MIRIAM E. OATMAN. (Baltimore: Johns Hopkins Press. 1928. Pp. xiv, 770.)

The book here discussed is one of the Studies in Administration of the Institute for Government Research, and the first of a series to cover the government and administration of the leading countries of Europe. As stated in the press announcement, “the volume . . . considers in a broad way the governmental system of Germany as a whole, the structural organization and functions of all its political units, the nation, the states, and the local units, the interrelation of these bodies from their operative standpoint, the methods of administration in general and of the more important special functions in particular, and the complicated lines of control over the many different political units and governmental agencies.”

With the authors' decision to cover so wide a field in one enterprise the reviewer has no right to find fault. Having made their choice, they

have on the whole shown good judgment in the limitations which in the nature of things were imposed upon them. The most thorough treatment has properly been accorded the national and state organizations, and within that field "special emphasis has been laid upon the new system of taxation and its administration, the new budget system, the personnel system, the conduct or control of economic enterprises, the new educational system, and the system of administrative courts." Nevertheless, the chapter on the educational system is disappointingly meagre, while the subject of local government has recently received more adequate treatment in Bertram W. Maxwell's *Contemporary Municipal Government of Germany*.¹

The work is done in a scholarly fashion, and the information offered is sound, although, as the reviewer knows full well from his own experience, perfection is never attained in works of this kind. As a rule, the subjects dealt with are brought up to date as far as possible. In a few instances, however, attention to more recent developments might have been of added value. In the section dealing with the administrative reorganization of the federal and state governments the analysis of the opinions of Lohmeyer and Koch-Weser (p. 25 ff.) might have been replaced advantageously by references to the creation, in December, 1927, of the Association for the Renovation of the Reich, representing the big business interests, under the chairmanship of former chancellor Luther, and by an analysis of its program. Reference might also have been made to the appointment, by the States Conference of January, 1928, of two committees charged with the working out of reports and programs for the realization of the reforms demanded.

The result of the authors' policy of translating German terms representing typical German institutions confirms the reviewer's belief that it is wiser and more effective to define such terms than to translate them. There is, for instance, the term *Staatsgewalt*, employed throughout the German constitution in that form as the equivalent for "sovereignty" in the constitutional, legal sense in contradistinction to sovereignty in international law. In their attempt to accomplish the impossible, Blachly and Oatman render it on one page as "supreme power" in Article 1, and as "sovereignty" in Article 5, of the English text of the German constitution. There is the term *Staatsgerichtshof*. Sometimes it is properly left untranslated (pp. 135, 423, and elsewhere), sometimes it appears as "High Court of State" (pp. 9, 22-23, 72-73,

¹ See the next review.

135, and in Articles 19, 59, 108 of the English text of the German constitution), and finally it is found as "Supreme Judicial Court" (pp. 61, 153). Even in the index it appears as *Staatsgerichtshof* and as "Supreme Judicial Court" in the reference to p. 61. If in this instance the authors intended to bring out a possible functional difference, they failed to make the distinction clear. The term *Reichsgericht* apparently remains untranslated throughout the text and in the index except in one reference to p. 420, under the item "Supreme Judicial Court," which, as shown above, is also applied to the *Staatsgerichtshof*. A similar inconsistency is manifest in the case of the term *Rechnungshof*, which is given as such on p. 38, as "Court of Accounts" on p. 235, and as *Rechnungshof* and "Court of Audit" on p. 251.

Much could be said concerning the choice of English equivalents in general, which often seem to wander needlessly from the nearest to the remote. On page 12 the term *Gesetzgebung* has been rendered as "jurisdiction," instead of [right of] legislation or legislative power, the terms used in the English text of the constitution (p. 644). The term *Beamte* is given as "officers" instead of "officials," in the sense of public officials. In consequence, we find on page 386 the term officers applied to regular officers of the army, to male officials of the public or civil service, and to women officials (referred to as women officers) of the same category.

The usefulness of an excellent and nearly exhaustive bibliography has been impaired by the failure to systematize to the best advantage. A bibliography of sixty-nine pages, arranged under numerous topics, deserves at least a topical listing. Nor is the enumeration of bibliographical items in section after section of compact text, and the absence of the alphabetical or chronological arrangement in some of the line-for-line sections, apt to lighten the user's already heavy burden.

But with all its peccadillos the work is an outstanding achievement in its field. It holds its own with any of the Studies of the Institute. No greater compliment could be paid its authors than the expression of wonder that a book containing such a wealth of detail did not turn out a deadly bore. Is the reason for its happy escape to be found in the fact of its joint authorship? Surely no mere male is endowed with such love for minutiae, nor with such deftness at making a point.

JOHANNES MATTERN.

Johns Hopkins University.

Contemporary Municipal Government of Germany. By BERTRAM W. MAXWELL. (Baltimore: Warwick and York, Inc. 1928. Pp. 162.)

The development of municipal government in Germany since the war possesses a peculiar interest for American students of government. The vast amount of excellent material on the subject published in Germany during the past five or six years is both a challenge and an incentive to English-speaking scholars to present in English the recent contributions of German cities to the science and art of city government.

In this brief monograph Professor Maxwell "attempts . . . to describe the most important and significant changes brought about by the Revolution in the government of German cities" (p. 3). Especially significant among such changes are: a definite trend toward municipal democracy, as evidenced by the inclusion of the initiative and referendum "in some of the municipal systems," and by "the application of the universal suffrage clause of the national constitution to municipalities" (p. 128); deprivation of "cities of independent authority which was a part of municipal privilege in the pre-revolutionary period," resulting from centralization of power in the national and state governments, especially in the field of financial legislation; a decided increase in the influence of party politics (p. 51); and a serious attempt on the part of municipal officials "to purge their ranks of bureaucratic self-sufficiency" (p. 130). The author finds that "the post-revolutionary municipal governments are attempting to blend two seemingly irreconcilable elements: democracy and efficiency."

The book consists of twelve chapters, touching upon practically the whole range of municipal organization and functions, including an historical sketch from the medieval town to the present-day city, and also the legal and constitutional relations between the cities and the national and state governments. An excellent translation of the proposed national municipal code is given in an appendix. Bibliographical notes and a selected bibliography add to the value of the monograph.

The attempt to cover such a vast field in space so limited inevitably tends to make the treatment rather mechanical and sketchy in some places and vague and uncertain in others. For example, elaboration possibly could have made clear how cities prohibited by national law "to levy surtaxes on land in excess of 150 per cent of the state tax" have been compelled by economic necessity to exceed this rate (p. 78). The more satisfactory portion of the book relates to the organs

of government and the legal relations set forth in the proposed national municipal code, while the least satisfactory portion deals with municipal finance and municipal enterprises. The latter subject is disposed of in a chapter of two and one-half pages.

The vast storehouse of information on these subjects contained in Mitzlaff and Stein, *Die Zukunftsaufgaben der deutschen Städte* (1118 pages), *Monographien deutscher Städte*, edited by Edwin Stein (covering at least twenty-six municipalities), and the *Statistisches Jahrbuch deutscher Städte* (the indispensable standard compilation of financial statistics of German cities), appears not to have been drawn upon. German sources alone must still be relied on for essential facts upon such important subjects as the sources of municipal revenue and the extremely interesting experiments in municipal trading since the war. While this monograph may be taken as an introduction to, or suggestive outline of, the subject, it seems fair to conclude that a satisfactory book in English on contemporary German municipal government is yet to be written.

ORREN C. HORMELL.

Bowdoin College.

The Psychology of Socialism. BY HENRY DEMAN. Translated from the second German edition by Eden and Cedar Paul. (New York: Henry Holt and Company. 1927. Pp. 509.)

At a meeting of the American Political Science Association two years ago the writer of the present review tried to draw the attention of American political scientists to the problem of the crisis of Marxist socialism in Europe, because it seemed to him that the mass psychology of this process had very important consequences from the point of view both of political theory and of practical issues. This endeavor seemed a failure, because nothing can be more antagonistic than the social and political atmosphere of the United States and that of the Marxist labor movement in Europe. Such being the situation, the present book of Henry DeMan must be welcomed by all who acknowledge the importance of mass-ideological movements in history.

The author of the volume is a Flemish intellectual who devoted his whole life to Marxist socialism. His political convictions, however, were shaken by the tremendous experiences of the last decade. The breakdown of the Marxist International during the World War, the establishment of a military absolutism in Russia under a communistic symbol, and the practical non-existence of a socialist movement in

America, whose social and political life he studied carefully, with intimate touch with her workers, "racked [him] with doubts and scruples whose echoes will be heard in this book." *The Psychology of Socialism* is not the fruit of rummaging in libraries, but is based on the practical experiences of a life devoted to the education of the proletariat. The author is convinced that the present evolution of the Marxist creed does not any longer satisfy the real necessities of the working class, that it must be remoulded according to the vital needs of the new generation. In order to prove his point, he gives a detailed and penetrating analysis of the mass psychology of the Marxist movement.

Among many interesting problems treated, let us emphasize only these few: the antagonism between theory and practice; the sentimental idealization of the proletariat by those who know it only through books; the social inferiority-complex as the driving force of European socialism; the problem of the intellectuals as an open sore in the life of the Marxist parties; the rebirth of religious symbolism in the labor movement; repudiation of the theory that the state is nothing else than the governmental organ of the leading class interests; the non-existence of a distinct proletarian culture; the naïve simplification of the violence theory; capitalism as a method of production opposed to a method of domination; the devastating effect of a mass psychology based on a mechanical determinism. These and other problems are scrutinized with rare acumen and intuitive penetration. The hasty generalizations of Le Bon and others in the field of social psychology find here sufficient correctives and qualifications. The dangers menacing the labor movement in Europe are vividly portrayed. The failure of American socialism is acutely explained.

All in all, the book is one of the most suggestive contributions to recent politico-social literature. Even if we disagree with certain of its conclusions, we must enjoy the brilliancy and sincerity of its efforts.

OSCAR JÁSZI.

Oberlin College.

State Administrative Supervision over Cities in the United States.

By SCHUYLER C. WALLACE. (New York: Columbia University Press. 1928. Pp. 288.)

Mr. Wallace has made a careful study of the methods of state administrative supervision over cities in the United States. This is based on an analysis of statutory provisions, data from official reports, and specialized studies, with additional information collected by corres-

pondence. Limitations of time and facilities have prevented a more intensive and exhaustive investigation; but the materials available have been well analyzed and arranged.

An introductory chapter gives a brief survey, based on secondary sources, of the systems of central supervision in Prussia, France, and England. This is followed by a discussion of principles of administrative supervision, in which are examined the various methods of control—reports, inspection, advice, grants in aid, approval, review, orders, ordinances, removal, appointment, and substitute administration. Succeeding chapters consider the application of these methods in the different states, in the fields of public finance, public health, public education, dependency and delinquency, municipally owned utilities, and other functions. A summary of results reaches the general conclusion that state administrative supervision over cities has been making considerable headway in this country, and that the process of centralization may be expected to continue.

Little attention is given to the historical development of state supervision, or to the machinery of supervision; nor are there general comparisons as to the relative degree of supervision in different states. The present work gives a good general survey of existing conditions; but there is room for more intensive specialized studies of the situation in particular states and fields of administration. A number of studies of the earlier stages of this development were made several decades ago at Columbia University under the direction of Professor Goodnow. These might well be continued and made the basis for a more definitive appraisal of the movement as a whole.

JOHN A. FAIRLIE.

University of Illinois.

The Philippine Islands. BY CAMERON FORBES. (Boston: Houghton Mifflin Company. Two volumes. 1928. Pp. xiv, 620; x, 636.)

In these two volumes ex-Governor W. Cameron Forbes has produced the most important book as yet written by an American about the Philippine Islands, and has made a distinguished contribution to the world's literature of colonial government. Mr. Forbes went to the Philippines in 1904 as a member of the Philippine Commission and secretary of commerce and police. In 1908 he became vice-governor, and a year later governor-general, holding the latter office until 1913. A New Englander possessed of assured position, wealth, and wide experience in large business affairs, he gave ten years of his life to

devoted, constructive service of his country on her most distant frontier. Since 1913 he has maintained close contact with Philippine affairs and has made two long journeys through the Islands, one of them as a member of the Wood-Forbes mission of investigation. The book which he has now written is the fine fruit of this unique experience and of an infinite amount of painstaking, scholarly labor. In it are successfully combined the knowledge possessed by the responsible official and that obtained by the scientific historian who works from the documents. In the foreword, acknowledgement is made of the assistance of Frank W. Carpenter, another distinguished official of the Philippine government, whose period of public service ran from 1899 to 1923, and who "in effect made this work a compendium of Philippine history, with references to original sources." The author also has been able to command ample technical and clerical assistance of a high order and has made excellent use of such aid.

Based upon extraordinarily extensive documentary sources, supplemented and interpreted by intimate first-hand acquaintance with men and affairs in the Philippines, Governor Forbes' work possesses a technical excellence which cannot fail to command the respect of the professional historian. It is admirably proportioned, accurate, and written with the spirit and the technique of the scientific scholar, rather than of the special advocate or the reminiscent man of affairs. Yet, although the author's style is characterized by clearness and simplicity rather than brilliance, Governor Forbes' long story possesses a true epic quality. His recital of thirty years of history in the Philippines brings to the reader a vivid and true conception of the high purpose, the invincible will, and the unselfish spirit of those Americans who have made their country's rule over this distant Malayan people a blessing to the Filipinos, a benefit to the world, and a credit to itself. Nor does the former governor-general neglect to recognize either the contributions which the Filipinos have made to the remarkable development of their country or their high qualities as a people. He is scrupulously fair to them, and to those of his countrymen who have differed with him as to American policy in the Islands.

Governor Forbes, however, does not fail to express definitely and forcefully his own convictions as to America's record in the Philippines, and the principles which should continue to govern the relations between the United States and the Islands. "It is hard for any fair-minded person to study the course of events in the Philippine Islands," he declares, "without feeling that in the main the United States has

succeeded in its effort to improve the condition of the Filipinos and to prepare them for nationality. . . . All in all, there is abundant cause to feel that the great American statesmen concerned with Philippine development were wise and their policies fundamentally sound." The statesmen thus referred to are clearly McKinley, Root, Taft, Roosevelt, Wright, Wood, and Coolidge, and those associated with them in responsibility for the government of the Philippines. It is the policy of these Americans which Governor Forbes believes should be steadfastly followed until eventually it shall bring the Philippines either to the goal of a secure and genuinely independent place among the family of nations, or to a voluntary and mutually satisfactory association with the United States.

The two large volumes deal with virtually every physical factor, incident, activity, and personality which has vitally affected the Philippine Islands during the past thirty years. The work has, indeed, a distinct encyclopædic quality, which is heightened by the ease with which the excellent index makes accessible the vast amount of material presented. In dealing with each subject, especially in the long section concerning governmental activities, the author briefly and skillfully articulates the modern institution, service, or policy with its Filipino and Spanish antecedents. He then traces its development and presents the views of various observers and critics as to its worth. There is scarcely an important viewpoint, American, Filipino, or foreign, concerning any of the subjects treated that is not set forth in the language of those who held it. This characteristic adds greatly to the historical value of the book. The author's own characterizations and judgments of people and events are marked by caution and restraint. He has consistently softened or ignored the worst traits of the characters with which he deals. If this policy has diminished the vividness, and perhaps the reality, of his story, it has probably increased the permanent worth of his work.

Of supreme usefulness to serious students of Philippine affairs are the numerous data and documents which appear both in the notes and in the thirty-seven appendices to the text. Many of these tables and statements were obtained from official sources not open to the ordinary historian, or compiled from scattered and comparatively inaccessible documents. They contain the sort of material which is necessary for an understanding of events, but often extremely difficult to obtain. These documents, together with the author's own explanation of incidents in which he personally participated or of which he had first hand knowl-

edge (as, for instance, the budget deadlock of 1910, 1911, and 1912), and numerous extracts from a personal diary that seems to be comparable with that of John Quincy Adams, make the book itself a primary source of first importance. Secondary material has been used widely and discriminatingly. It is surprising, however, that a number of valuable works by competent Filipino scholars have been ignored.

In preparing this fine account of America's trusteeship for the Philippines, Governor Forbes has added distinguished service as an historian to that which he has previously rendered as a statesman. In both fields he has merited the thanks of the friends of good government everywhere.

RALSTON HAYDEN.

University of Michigan.

Naboth's Vineyard; the Dominican Republic, 1844-1924. By SUMNER WELLES. (New York: Payson and Clarke, Ltd. 1928. Two Volumes. Pp. xvi, 496; vi, 497-1058).

Probably the development of no Caribbean state has been presented in such detail in English as is that of the Dominican Republic in these volumes. Mr. Welles had special fitness for his task through familiarity with Caribbean affairs by service on various special commissions, as chief of the Latin American division of the Department of State, and as American commissioner to the Dominican republic from 1922 to 1925. He had access to the unpublished materials in the Department of State, and, particularly for the last forty years, has relied upon information obtained from prominent Dominicans.

The events of the last half of the eighteenth century and of the "Haitian servitude" are covered in an introductory chapter as a background to the detailed study of the period since 1844.

American interest in the discussion lies in the degree to which it shows the development of ability to govern themselves among the people and in the relations of the United States to the island. Progress toward self-governing ability has undoubtedly been made. Hawking around to find someone—France, Great Britain, Spain, or the United States—willing to take a protectorate over the country, or annex it, such as occurred during the years following 1844, could not openly be done by a present-day dictator; even Heureaux stopped short of that. Mr. Welles finds the Dominican Republic working toward national

consciousness and toward greater ability in self-government in spite of the clashing interests of foreign powers, the plans of concessionaires and loan-makers, the treasonable desires of many of the dictators, and the inexperience and ignorance of the people. A spirit of nationality has undoubtedly developed. On the other hand, the story shows the continuance of the old curse of personalism even down to our own day, which creates doubts as to the degree to which Mr. Welles' optimistic view as to the future is justified.

Neither Americans nor Dominicans can be uniformly proud of the story of the international relations of the republics, or at least of the record of all their representatives. There have been outstanding patriots in both lists, but there is a too generous sprinkling of men whose personal and official records leave much to be desired. There is, however, no comfort for those who believe that the United States government has pursued a covert policy looking toward overthrowing Dominican independence.

Special emphasis is laid upon the attitude of recent American administrations. President Roosevelt's agreements are commended. The Taft "dollar diplomacy" régime is severely criticized. Altruism in the earlier Wilson declarations is shown to have been followed by a harsher policy resulting from too great reliance on subordinates. The military occupation is shown to have produced anti-American feeling which it will take years to overcome. The Harding-Coolidge administrations are found returning to correct standards in Dominican relations.

In a concluding chapter, the need of a consistent policy of coöperation to eliminate causes of unrest among the peoples southward is emphasized. Such a policy, it is argued, must be constructive and not merely remedial. Among the obstacles to friendly coöperation in the past Mr. Welles finds the American tariff in the forefront. Whatever the defects of the tariff, this conclusion is difficult to follow; for the important Caribbean products, with the exception of sugar and tobacco, find in the United States a market where tariffs are low or non-existent. No close student of Latin American relations, however, can fail to agree that a forward policy based on mutual interest is desirable both for the United States and for its neighbors.

The book lacks an index and an adequate map. The bibliography is full but in very irregular form.

CHESTER LLOYD JONES.

University of Wisconsin.

American Foreign Relations. BY JOHN M. MATHEWS. (New York: Century Company. 1928. Pp. xii, 604).

In view of the present tendency in professorial circles to indict on all counts the recent and present foreign policy of the United States, there are many passages in Dr. Mathews' book which should meet with the cordial approval of the academes. He finds much to criticize in American diplomacy, although he states that "in spite of the doctrine of manifest destiny and a somewhat imperialistic trend of our Latin American policy, our diplomacy has been characterized by a desire for international justice, morality, and goodwill" (p. 17).

Constructive criticism is always valuable, but such criticism should at least present both sides of the proverbial shield. In his treatment of the Venezuela boundary controversy with Great Britain, Professor Mathews may be justified in describing the Olney note as "an example of shirt sleeve diplomacy at its worst" (p. 46), and the Cleveland message as expressed in "intemperate and unnecessarily offensive language" (p. 49). But he could also have pointed out that the note and message had a background of quite a few years of repeated, and always courteously expressed, requests to Great Britain to arbitrate the question, and that these requests were, practically speaking, ignored by the British government to an extent which tried even the patience of a Democratic president. It is but fair to add, however, that Professor Mathews does not apologize for the action of the Cleveland administration quite as much as some American academic authorities who have discussed the subject. He states that "the position which our government took in the Venezuela boundary affair may be too severely criticized" and "our espousal of the rights of a small nation . . . breathed something of the same spirit with which we espoused the rights of Belgium" (p. 49). "We may have been hoodwinked by Venezuela into taking her side when she had no real case" (p. 49), but it is doubtful. Richard Olney was an able lawyer, and the decision of the arbitral tribunal on the important issue involving the mouth of the Orinoco River—a point not referred to by Professor Mathews—was against Great Britain's position.

The subject of the Pan-American Union could have been presented in a somewhat different manner. The author considers it, however under a sub-heading to his chapter (vii) on "The United States and the League," and as a result his discussion of the Union is largely subordinate to the League issue and the idea of "possible rivalry" (p. 149) between the Pan-American body and the League. Conjectures

of this kind are of academic interest, but a chapter containing a survey of the achievements of the Pan-American Union since it was formed could have been added. References to the very important sixth Pan-American Conference are extremely brief, and the constructive diplomacy of Charles E. Hughes at the Havana gathering is not brought out. Furthermore, Dr. Mathews, in referring to the fight in the Conference over the non-intervention resolution, gives the impression that the opposition to the resolution came in the main from the delegation of the United States. A study of the discussions of the Conference will show that this was not the case, and that one of the outstanding leaders in opposing it was a South American, the distinguished Dr. Victor Maturua of Peru. No mention is made of this, however, by Dr. Mathews. He could also have stated that after Mr. Cuadra Pazos, minister for foreign affairs of Nicaragua, made his speech of February 8, 1928, the non-intervention issue was not pressed.

The chapter (vi) on "Relations with the Far East" contains a brief but comprehensive review of this aspect of our foreign policy. The author's discussions of the Open Door, extraterritoriality, and the Washington Conference are admirable. His treatment of the Japanese immigration issue with particular reference to the events of 1924 is open to criticism. He may be justified in his belief that Congress failed to adopt a "sensible suggestion" (p. 99) when it refused to place the Japanese on the quota, as only 246 Japanese would be admitted per year under the 1890 census. He should have added, however, that one of the reasons why Congress did not do so was because if the Japanese were given the quota privilege, the Chinese could claim similar treatment, and he could have called attention to the fact that under the 1890 census more than 2,000 Chinese would be admitted annually. Dr. Mathews' statement that "when the note [of Ambassador Hanihara containing the phrase 'grave consequences'] was made public the Ambassador denied that it was intended to convey a veiled threat" is misleading. It would have been fairer to state that the "grave consequences" note was dated April 10, 1924, and that, according to Mr. Hanihara, it was not until "in reading the *Congressional Record* of April 14, 1924" he sent a note dated April 17, 1924, to Secretary Hughes in which the Ambassador explained that he had not meant "anything like a threat."

In the second part of the book, which deals with the conduct of American foreign relations, one finds little to criticize and much to praise. The chapter (xiii) on the State Department is excellent,

and the same can be said regarding the chapters on the diplomatic service (xix), the reorganized foreign service (xv), and the consular service (xviii). The treatment of the difficult subject of diplomatic intercourse (Chaps. xvi-xvii) should please even the career diplomat, and students of international relations will gain much from reading the discussion regarding treaties and the treaty-making power (Chaps. xx-xxi, xxiii-xxv). Some of the author's conclusions pertaining to the agreement-making power (xxii) may be questioned by lawyers of the strict constructionist school, but until the Supreme Court has definitely ruled as to the legal status of executive agreements, judgment as to this must be deferred.

EDWARD C. WYNNE.

Washington, D. C.

Survey of American Foreign Relations, 1928. BY CHARLES P. HOWLAND.
(New Haven: Yale University Press. 1928. Pp. xiv, 610).

This first volume of a series of studies of American foreign relations to be made under the sponsorship of the Council on Foreign Relations indicates that we may at last look forward to a searching and exhaustive survey of the foreign relations of the United States by experts in the various fields. A feature of particular interest to the political scientist is that the studies are being made upon a topical rather than upon a chronological basis. Although the plan seems to be to select topics each year which have shown a special development that year, in every case the historical background has been given so completely that the studies form miniature monographs on the subjects considered.

The present volume is divided into five sections, as follows: (1) American Foreign Policy, (2) The United States as an Economic Power, (3) The United States and the League of Nations, (4) Financial Relations of the United States Government after the World War, and (5) Limitation of Armament.

The first section, which in its first two chapters considers the factors, forces, and traditions of American foreign policy, serves as an excellent background for the subsequent studies. The importance of economic facts, even when in conflict with political theories, is clearly recognized; for, as frankly stated, "our reverence of a tradition has had no claims upon the economic explorers . . . who are carrying American capital into the unexploited regions of the earth. They reckon little of the doctrine of isolation . . . they involve us in a competition with the economic expansionists of other countries; they clamor for protection and assistance when concessions are in danger . . . and in their eyes

the responsibility of a government to protect its nationals and their foreign investments abroad takes precedence over the non-intervention theory and over its corollary, the Monroe Doctrine."

The third chapter, on domestic control, covers a phase of foreign policy too often overlooked. The situation faced by our government, considering that the occasions for friction between the executive and the Senate have increased from about one a year to fifteen a year, indicate the seriousness of the problem. The study of the State Department and its reorganization is particularly apropos, and it is to be hoped that Congress, which grants the departments of war \$2,000,000 a day, may be induced henceforth to grant our department of peace more than \$2,000,000 a year, its present net appropriation.

The second and fourth sections on economic, commercial, and financial policies of the United States before and since the war furnish a most illuminating survey, broad enough to cover the European problems as well as our relations to them. With the present interest in the problem of reparations and war debts, the comprehensive analysis here presented should prove invaluable.

The third section gives a remarkably clear and unbiased history of the relations of the United States with the League of Nations, from the program sponsored by the League to Enforce Peace to the present quasi-official coöperation. Although the onus of blame is placed upon the Constitution for the failure of the United States to join the League, the personal animus of Senator Lodge and the selfish partisanship of the Senate are in no way minimized. The narration of the efforts of the Harding administration to avoid all taint by refusing to reply to the League, or even to forward its communications to the proper persons, would be amusing if it were not so pitifully tragic.

The last section, on the limitation of armament, is a complete survey of the attempts which have been made, both inside and outside the League of Nations, since the World War. The analyses of the Washington and Geneva Conferences are particularly well done, and the suggestions for an Anglo-American naval understanding merit the careful consideration of the next conference.

The volume has been so carefully written and edited that it is hardly likely that many errors will be found. A question might be raised regarding the statement (p. 532) that the Four Power Pact was first proposed by the British and the Japanese, and that Mr. Hughes insisted upon the inclusion of France. According to Mr. Ichihashi, who as secretary to Viscount Kato was in a position to know, Lord

Balfour astounded the Japanese by informing them that he had already discussed a triple or quadruple entente with Mr. Hughes, and once the arrangement was made, an invitation was given to France without any pressure upon the part of any one. One might also wonder why Mr. Hughes' valuable interpretations of the Monroe Doctrine have been entirely overlooked. But the scope of the work is so broad and its excellence so manifest that one can only hope that subsequent volumes will reach the high standard set by the first.

GRAHAM H. STUART.

Stanford University.

Far Eastern International Relations. BY HOSEA BALLOU MORSE AND HARLEY FARNSWORTH MACNAIR. (Shanghai: The Commercial Press, Ltd. 1928. Pp. xx, 1128).

For a general survey of international relations in the Far East the student has usually relied upon Morse's *The International Relations of the Chinese Empire*, Cordier's *Histoire des relations de la Chine avec les puissances occidentales*, and Dennett's *Americans in Eastern Asia*. These three works complemented each other in a very useful manner. Morse was concerned chiefly with commerce, and his sources, especially in his first volume, were largely found in British blue books. Cordier used additional materials and stressed the rôle of France as the protector of Roman Catholic missions. Dennett, with unusual opportunities to examine the archives of the American State Department, and with no special emphasis upon either commerce or religion, was able to furnish some valuable correctives to both of the earlier studies. Cordier and Dennett bring the story down to 1901, and Dennett included Japan and Korea in his narrative. Morse, in three bulky volumes, comes down to the end of the Empire in 1912. Unfortunately, these three standard works are either costly or out of print.

To meet the real demand for a detailed survey of Far Eastern international relations, Professor MacNair, for many years on the staff of St. John's University, Shanghai, and now at the University of Chicago, has provided a condensation and enlargement of Morse's invaluable study. The condensation consists of the elimination of a large amount of detail, especially that dealing with the commercial aspects of the treaty relations. The enlargement is found in chapters which bring the international relations of Japan into the story and continue the narrative from 1912 to the assassination of Generalissimo Chang Tso-lin, at Mukden, in June, 1928. The result is a stout

volume of 1056 pages of text, with seventy-two pages of bibliography and index in addition.

That Dr. MacNair has done his work well is beyond question. *Far Eastern International Relations* and the companion volume of source materials, *Modern Chinese History, Selected Readings*, should be on the shelves of every library where the literature of Far Eastern history is assembled. Bearing in mind that the work began as a condensation of a treatise which dealt almost entirely with China, it is easy to understand the emphasis which is placed upon the affairs of that country. Perhaps when a definitive history of the foreign relations of Japan is written it will be found that in the period before 1912 the proportion of one to four does not quite represent the relative significance of the affairs of an Empire which is today actually, not merely potentially, one of the great powers of the world. But unfortunately there is no Morse or Cordier to fall back upon in this emergency. It is also probable that when better materials are accessible some of the estimates of the conduct of Japan will have to be freshly evaluated.

One of the most useful features of Morse's text was the full documentation, largely based upon British and American diplomatic correspondence. These citations have been omitted in MacNair's treatise, probably because of the frequent references to the source volume, and in the continuation chapters reliance has had to be placed upon secondary works of, at times, very doubtful value. The accessible diplomatic documents, for example, would permit a rewriting of the statements as to how Japan entered the World War, as to the progress of the negotiations resulting from the Twenty-one Demands, and as to the origin of the Lansing-Ishii notes. These comments are made, not to lessen one's admiration for Dr. MacNair's treatment of a very controversial period, but to suggest the value of the new materials which are coming out of the European and American foreign offices.

In the last chapter, which is entitled "The Far East in 1927," but which covers the rise of Nationalism in China since 1923, Dr. MacNair evinces a sense of reality in dealing with Chinese politics which at times seems to be lacking before 1923. The events of 1926-1928 in China produced, on the part of many foreigners there, an appreciation of the difficulties which Japan earlier faced in dealing with Chinese war lords and politicians. That Japan made many blunders in dealing with China after 1905 is apparent, but it must not be forgotten that Chinese officialdom made blunders almost inevitable.

PAYSON J. TREAT.

Stanford University.

International Law. BY L. OPPENHEIM. Vol. I. Peace. Fourth Edition. Edited by Arnold D. McNair. (New York: Longmans, Green and Company. 1928. Pp. L., 827.)

A new edition of Oppenheim's classic treatise is always an event among scholars. The second edition of 1912 was from Oppenheim's own hand, and it will always be valuable as giving us the author's progressive views of international law on the eve of the great war which was to bring about so many changes in the accepted rules. Roxburgh's edition of 1920 (Vol. I), 1921 (Vol. II), incorporated into the text much new material partly gathered by the author before his death in 1919. Professor McNair's fourth edition of Vol. II in 1926 introduced even greater changes, and now that it has been followed by the new edition of Vol. I, the two volumes should properly be referred to as McNair's *Oppenheim*.

The chief merit of Oppenheim's treatise has always been its lucid presentation both of the general principles of the law and of the facts of international practice from which concrete rules of conduct may be drawn. But pervading the discussions of principle and practice was an ideal conception of a better ordered family of nations, a constructive national intercourse, a sense of law as the only alternative of force, a belief in the "eternal moral and economic factors" working in favor of the development of international law. Oppenheim's idealism, however, did not in any way interfere with his careful and balanced statement of conflicting views in matters where principle was not clear and practice was at variance. The partisan logic of Hall was noticeably absent from his pages; and he brought to the Anglo-Saxon interpretation of international law a needed corrective in his references to Continental treatises.

The editor's contributions to the present edition cover the numerous restatements of the law called for by the events of the past eight years. The sections dealing with the Covenant of the League of Nations are rewritten and new sections are added dealing with related matters, such as mandatés. Further new sections of importance deal with the protection of minorities, the International Labor Organization, the recognition of states and governments, and contract debts. In addition, two very useful appendices contain a list of the more important general conventions of a non-political character and a list of labor conventions and recommendations. The bibliographies and the foot-note references have been brought up to the date of publication.

Professor McNair deserves our thanks for the great service he has rendered. His was a task which required scholarship and patience, and his reward must be the knowledge that he has given a further long lease of life to a treatise which otherwise might have shared the fate of classics that have come to have only an historical interest.

C. G. FENWICK.

Bryn Mawr College.

Losing Liberty Judicially: Prohibitory and Kindred Laws Examined.

BY THOMAS JAMES NORTON. (New York: The Macmillan Company. 1928. Pp. xvi, 252.)

Mr. Norton, of the Chicago bar, whose book on *The Constitution of the United States* appeared in 1922, here devotes himself to recent invasions of the liberty articles by Congress or the state legislatures as sustained by the Supreme Court. His volume is devoted mainly to such decisions arising under the Eighteenth Amendment. He, however, wisely objects to the use of the words "wet" and "dry." The almost unanimous objection of the bar, and that of most patriotic Americans, to that portentous change in our government is due, not to any predilection for alcoholic drink, but to the fact that it nullifies the Ninth and Tenth Amendments and the Bill of Rights, and because it destroys the whole fabric of our federal government and entails consequences destructive of individual rights to liberty, law, sanctity of the home, and trial by jury.

Much space is given to discussion of *Mugler v. Kansas* and other cases which justified the invasion of property and contract rights under the prohibition movement. This water has passed under the bridge; and it is useless to criticize Supreme Court decisions except on the Constitution itself and constitutional questions, where no doctrine of *stare decisis* applies. The same may be said of the author's challenge of the Amendment as not properly proposed and adopted; though it must be admitted that his argument against the vote of two-thirds of a mere quorum being sufficient appears rather convincing.

Beginning with an historic disquisition upon the English doctrine of liberty, pointing out that it began in religious affairs before being extended to secular, discussing the American invention of a judicial safeguard, showing that the Eighteenth Amendment was unnecessary, unfairly adopted, and against the whole spirit of the Constitution, Mr. Norton lays down (p. 32) one luminous and novel thesis—that the Tenth Amendment should be construed liberally, just as we construe

liberally those clauses which confer powers on the federal government. He then (p. 90) comes to concrete cases, beginning with *Mugler v. Kansas*, and ending with *Crane v. Campbell* (1917), which said that the mere possession of liquor might be made criminal by statute, and the transportation thereof also (*U. S. v. Simpson*, 252 U. S. 465).

The last third of the book is given to a discussion of some of the channels through which our liberties are being "judicially" lost—the Oklahoma bank guaranty case, the Interstate Commerce Commission's order for track elevation of the Erie Railroad, the Michaelson case under the Clayton Act taking away the power of equity courts to punish in contempt process acts which are otherwise criminal (266 U. S. 462), Daugherty's habeas corpus process against detention by the Senate for refusing to testify (273 U. S. 135), and the attempt of the commonwealth of Massachusetts and one of its citizens to resist taxation to support the federal "Maternity" Board, created under one of the objectionable "fifty-fifty" acts of Congress (262 U. S. 467). The conclusion is that "the judicial department of our government is, as the writers of the Constitution believed, indispensable to liberty and in need always of the support of the people. Only a people indocinated by the schools with our philosophy of government can be capable of holding a President and Congress"—and, we might add, their own legislative omnipotence—"where they belong."

While, naturally, not all of the arguments in this book are therein advanced for the first time, we may safely say that the more of such books the better.

F. J. STIMSON.

Dedham, Massachusetts.

The Irish Free State, 1922-1927. BY DENIS GWYNN. (London: The Macmillan Company. 1928. Pp. xvi, 436.)

A steadily growing literature on the new Ireland is enhanced by the appearance of this solid survey of six years of Irish political and economic development by the distinguished author of *The Catholic Reaction in France*. He has packed into 400 clearly, if not often colorfully, written pages a vast store of information, reliably documented, about the remarkable work of the brilliant young state-builders of Dublin since the treaty of 1921. As never before, the reviewer had driven home to him by Mr. Gwynn's analysis what difficulties they had to contend with, what daring and sagacity they possessed in carrying along their sweeping administrative and economic reorganization.

Who would have thought so much could be accomplished in a short six years? Here is a bare enumeration of the more striking items in the catalogue of achievement: the amalgamation of forty disjointed boards and departments into some seven integrated administrative agencies; a complete reform of local government and poor relief; extensive primary and secondary educational reform, under a bilingual and state-aided arrangement; drastic measures for the up-building and sanitation of Irish agriculture, so that Irish eggs and cattle will really sell abroad; and above all, the bold Shannon River electrification project that bids fair to revolutionize Irish industry and transportation.

One wishes that Mr. Gwynn had devoted a chapter or two of his interesting book to a psychological examination of the background and qualities of leadership that enabled Cosgrave, O'Higgins, Hogan Blythe, and their like to succeed where men of less heroic stuff would have failed. For they have had to build out of anarchy and chaos, with a declining population, at least a third of which was in chronic poverty, and without East Ulster, the industrial heart of the country. Yet it is a story of optimism, and the author believes that the advent of the Republicans in the Dáil will pave the way toward an eventual reconciliation of Ulster and the Free State.

Those chapters of the book dealing with constitutional developments—the oath of allegiance controversy, the Senate and its dubious P.R. system of election, and the Commonwealth and external relations of the Free State—impressed the reviewer as being a little less lucid, a little less logically arranged, than the part which treats of social and economic matters. One regrets that neither the treaty nor the constitution was given in full text as an appendix to the volume. Maps showing the political, populational, and economic texture of Ireland would also have been useful, especially to American readers generally ignorant of Irish geography. And if Mr. Gwynn could have flashed more frequently a certain illuminating epic quality of style that now and then reveals itself in his pages, his book would have greater literary merit, and perhaps attract more lay readers.

These shortcomings apart, the volume stands as a noteworthy contribution to our knowledge of the new Ireland and its pioneering government, which, as Mr. Hogan, its minister for agriculture, so dramatically put it, was "determined to 'give the people something big to think about' in the years of despondency and distrust that followed upon the establishment of the Free State" (p. 321). Many

an older minister of smaller courage, in richer and supposedly more advanced countries, might well ponder the meaning of this dictum.

WALTER R. SHARP.

University of Wisconsin.

The Works Council: A German Experiment in Industrial Democracy.

By C. W. GUILLEBAUD. (Cambridge: The University Press. 1928. Pp. x, 305.)

Citizenship in the Industrial World. By G. A. JOHNSTON. (London: Longmans, Green and Company, Ltd. 1928. Pp. viii, 297.)

To the student of government, one of the most interesting features of the constitution of the German Republic adopted in 1919 is Article 165. Born of the workers' committees forced upon the imperial government by the exigencies of the war in 1916, and thrust into the constitution against the will of a labor government, this article envisages an industrial democracy of the broadest character. A democratic state not merely gives legal recognition to organized labor and organized capital and to their mutual agreements, but it calls upon all employees to coöperate, "with equal rights in common with employers," in the regulation of wages, working conditions and the whole economic development of production. It gives them a constitutional right to form local, regional, and federal workers' councils, and requires the establishment of regional and federal economic councils of employers, employees, and other interested sections of the community, "so constituted as to represent all important occupational groups in accordance with their respective economic and social importance." Finally, the Federal Economic Council is granted the right to be consulted upon bills of fundamental importance relating to social and economic policy, and even to initiate such bills and support them in the Reichstag.

It all smacks decidedly of socialism and has a strong pluralistic odor. But in this day and age when political science no longer confines its attention to things structural and shows an even keener interest in functional questions, we care less for the name by which an institution is called and more for the way it works. Particularly in the United States, where group representation is heretical (in spite of our congressional "blocs"), where the shop committee system is advancing so cautiously, and where governmental regulation is rather on the defensive, it should be especially interesting to learn how an experi-

ment inadmissible here is faring in another large industrial country.

Mr. Guillebaud's *The Works Council* is an excellent attempt to give us that information. He does not deal with the political functions of the Federal Economic Council, but, as the title indicates, confines himself to a survey of the operations of the works councils set up under the act of February 4, 1920, the half-hearted legislation passed to give effect to the first part of Article 165. He covers the period from 1920 to the middle of 1926, tracing year by year the inter-relationships between the works councils and the trade unions and between the councils and the employers, and reviewing and appraising the achievements of the councils in the more important matters committed to their charge.

No conclusive answer can yet be made, he thinks, to the question as to the success of the scheme. It was inaugurated under difficult conditions and found it hard to rid itself of Bolshevist influences. Employers were fearful and hostile, and the trade unions were apprehensive lest the works councils should become rival labor organizations and imperil the position of the unions. During the whole of the five-year period under examination there were decidedly abnormal economic and political conditions. Still he thinks the councils have been, on the whole, a constructive force in German industry, and the ablest leaders of the unions now regard them as indispensable in the progressive reorganization of labor.

The author quotes many illuminating passages from government reports and trade and labor periodical literature, and adds the text of pertinent legislation, as well as other interesting material, in several appendices. He evokes one's confidence by the scholarly impartiality with which he points out the mistakes made by both employers and employees, and sums up his conclusions in a very instructive chapter.

In *Citizenship and the Industrial World*, Dr. Johnston draws with sweeping strokes a picture of the citizen of the modern state conditioned as he is by the complex industrial environment. The development of industrialism has profoundly changed the conception of citizenship, which now involves not only an attitude toward the state but also an intricate system of relations between the individual and various associations and societies which have claims on his allegiance. Good citizenship, it is asserted, calls for the harmonizing of all his loyalties, a result attained by the activity of the state in coördinating and regulating all other associations. Most of the book is occupied with a sketchy description of the salient characteristics of the modern

industrial order, and with a review of the regulatory devices evolved for the purpose of keeping the dominant loyalty of the citizen-producer and the citizen-consumer a loyalty to the community as a whole. The author leaves with his reader an impression that practically all of the governmental regulation of economic activities of recent years has been undertaken to improve citizenship and is cast in the mold of community-mindedness. While this is far too rosy a view, there can be no question as to the importance of insisting that the social motive should be dominant in our economic politics. A democratic government should not protect and assist special economic groups at the expense of the general weal. Dr. Johnston not only demands that all the streams of regulatory legislation shall run into the river of good citizenship, but by numerous examples he illustrates the possibility of such an orientation.

A. R. ELLINGWOOD.

Northwestern University.

The Worker Looks at Government. BY ARTHUR W. CALHOUN. (New York: International Publishers. 1927. Pp. 176.)

Mr. Calhoun recites for us once more the familiar bed-time story wherewith Dame Socialism regales her children about the ogre Capitalism, who is made to masquerade this time in the genial garb of Uncle Sam. Economic process makes goods, political process takes them—is, in other words, predatory (p. 13). So far, therefore, is government in the United States, or anywhere else in this capitalistic world, from being service, that it is exactly the contrary. It is, so far as the masses are concerned, exploitation, although the fact may be sugar-coated by education, propaganda, hero worship, and the like. Yet there is one bright spot in the story, a Little Red Riding Hood. For “Labor’s struggle for political power,” we are assured, “is not for the purpose of taking the place of the present exploiters, but for the purpose of replacing government . . . by economic administration on the principle of ‘value for value’ ” (p. 40).

Unfortunately, the cause of this elevation of motive on Labor’s part, representing as it does so sharp a divergence from the previous course of history, is not mentioned by Mr. Calhoun. It may be due to a nobler kind of human nature in Labor, or to Labor’s present unfavorable situation. If the latter, it would be too bad to lose this leaven of good intention from the social lump.

Nor is this the only point at which Mr. Calhoun seems to fall into inconsistency. On page 103 he scouts the idea that a judge can assume a detached and disinterested position, or indeed that such a position exists. "To suppose," he says, "that it could [exist] is to presume the existence of an unchangeable right and justice, whereas views of right and justice change with changing conditions." On page 165 he praises the socialistic organization of an unnamed Florida city for refusing to prefer its own political advantage to the political right of the negroes: "The socialists knew," he says, "that they had no right to trade it [the negroes' right] away." So, whether standards of right change or not, there can be such a thing as "right" distinct from expediency; and if this is true, why cannot a judge perceive it? Or must we still entertain the assumption of the superior moral perspicacity of Labor? The fact of the matter is that the history of the law furnishes impressive evidence of the existence of comparatively unchangeable standards of right and justice.

In Chapter x Mr. Calhoun deals with "The Problem of the Supreme Court." He says some severe things, but his severity again is an appeal to standards other than of economic advantage. Thus he has little difficulty (pp. 116-17) in showing the first child labor decision to be a right-about-face on the part of the Court from previous decisions. But if the Court was fulfilling the rôle of a mere instrument of Capital in making this *volte face*, what rôle was it playing earlier? It would be a very unsatisfactory answer to say that the Court felt that conditions had changed.

Mr. Calhoun's volume contains numerous illustrations of the penetrative value of a selective point of view, but as a text-book on government it is absurd. So broad a landscape cannot be viewed from a single angle without distortion.

EDWARD S. CORWIN.

Princeton University.

Judicial Interpretation of International Law in the United States. By CHARLES PERGLER. (New York: The Macmillan Company. 1928. Pp. x, 222.)

This little volume purports to present a brief survey of the principles of international law governing the relations of states as interpreted by the courts of the United States. The author devotes a chapter each to the acceptance and enforcement of the law, independence and sovereignty, jurisdiction of states, citizenship and alienage, treaties,

and remedial measures falling short of war. These chapter headings are misleading. For example, under independence and sovereignty the author considers recognition, kinds of government, belligerency, rights, duties, responsibilities, and the continuing personality of states, in addition to the nature, acquisition, and loss of sovereignty. Not all of the chapters are as badly done: his treatment of citizenship, expatriation, and the rights, duties, and disabilities of aliens is as good as the usual treatment of these subjects.

In general, the writer has disregarded the facts of the cases considered and thus fails to distinguish clearly and accurately at all times between law and *dicta*. Such treatment leads one to suspect that the author has not properly digested and clarified some parts of the material presented. Furthermore, the numerous articles covering the subjects treated in this volume which have appeared in the *Columbia*, *Harvard*, *Michigan*, and *Yale* law school publications seem to have been completely overlooked by Mr. Pergler. To the reviewer, it appears that there is little to justify the publication of the volume.

JOHN G. HERVEY.

University of Pennsylvania.

BRIEFER NOTICES

AMERICAN GOVERNMENT AND CONSTITUTIONAL LAW

The Widening Scope of American Constitutions, by Sister M. Barbara McCarthy (Catholic University of America, Washington, D.C., pp. 134), outlines the expansion of state constitutions from the simple framework of the eighteenth century to the lengthy document of the present day and explains the reasons for this growth. There is little in the book that is new, but it contains a convenient summary of the development of provisions for increasing popular control over state government, and for the regulation of social and economic institutions such as education, labor, corporations, banking, prohibition, and local government. The study evidences the author's diligence, but some statements of fact and opinion may be questioned, e.g., the assertion that "the idea that the colonies had the right of revolution" was one of Blackstone's "definite teachings, which gave legal form to democratic ideas of government" (p. 2), and the assertion that the "present fundamental law" of Massachusetts "continues to be used [based] on the system of town government" (p. 15).

Administrative Reorganization in California, by W. W. Mather (Chaffey Junior College, Ontario, California, pp. 84), not only traces the history and actual results of the reorganization movement in that state but also outlines a tentative plan for reorganization by constitutional amendment. Contrary to the general belief, the author points out that the demand for administrative reorganization in the American states is not confined to the last few years of the twentieth century but goes back at least as far as 1871. Also he explains how the movement was postponed by certain cross currents, especially the so-called Progressive movement sponsored by Roosevelt, which turned the minds of reformers to direct legislation, and the new type of executive leadership represented by strong governors like Roosevelt, Hughes, and Wilson.

Teachers of introductory courses looking for suggestions concerning assigned readings and the arrangement and presentation of material will find much to interest and help them in a *Manual of American Government* (Western Reserve University Press, pp. 153) prepared by Earl L. Shoup. The booklet contains lecture and discussion topics, required readings, selected references for optional reading, and a list of current political happenings for observation and study.

The Foundations of the Constitution, by David Hutchison (Grafton Press, pp. viii, 406), is an annotation of each clause in the Constitution. It traces in constitutional history prior to 1787 the roots of the supreme law, the protection of contracts, freedom of speech, due process of law, etc. No attempt is made to evaluate the political, social, and economic fruit which the Constitution has brought forth.

The World Book Company has published a *Civics and Government Test* (pp. 16) for high schools and colleges, prepared under the auspices of the American Council of Education by Professors Robert D. Leigh, Joseph D. McGoldrick, Peter H. Odegard, and Ben D. Wood. The test is made up of 108 true-false statements, 13 groups of items to be matched, 24 multiple choice questions, and 25 short answer questions. The questions cover both facts and relationships in government, the technical vocabulary of the subject and underlying principles.

The National League of Women Voters has issued pamphlets on *County Government* (pp. 44) and *Corrupt Practice Legislation* (pp. 75).

FOREIGN AND COMPARATIVE GOVERNMENT

In his *Economic Nationalism of the Danubian States* (Macmillan, pp. xxvi, 609), Leo Pasvolsky has admirably carried out his purpose of analyzing the problems of post-war Austria, Hungary, Czechoslovakia, Rumania, and Yugoslavia. The question he poses is "Nationalism or Unity?" The question remains unanswered, but it is the inevitable conclusion arrived at after a searching inquiry. No one interested in the economic and political problems of Europe today, or in the general problem of peace, can omit this work from his reading list. Of the present Danubian states, only Bulgaria is not treated, the reason being, as the author states, that a separate study is forthcoming on that country. Part I presents a survey of the pre-war economic situation in Austria-Hungary, Serbia, and Rumania, followed by a description of the financial and economic elements involved in the dismemberment of the dual monarchy and the creation of the new states. Parts II to VI present in detail the economic situation of the five new states. In Part VII the author sets forth the factors involved in the Danubian situation as a whole, and attempts to appraise them both for the present and for the future. The *Anschluss* of Austria with Germany appears as almost inevitable. No portion of the world presents a more complex situation than does this traditional breeding-ground of wars. Its problem, for the present at least, seems insoluble. Intensified nationalism, with fierce animosities caused by the redistribution of boundaries and populations, is intimately intertwined with the question of tariffs and economic barriers. The will to maintain themselves as independent entities has furthered the industrial ambitions of these states to an exaggerated degree. Whether or not the cold facts of economic necessity will eventually force some reconciliation remains to be seen. M.W.R

The Macmillan Company has published a *Memorandum on Resignation: August, 1914*, by John Viscount Morley (pp. xx, 39). Among the various "revelations" of the inner workings of the minds of men and of cabinets in the critical days immediately preceding and accompanying the outbreak of hostilities in 1914, none is more revealing than the reasons Lord Morley gave to the world—and to himself—in this memorandum. "My days were dwindling, I was a notorious peace-man and little-Englander, etc." "No political rumination of mine, again, could ever leave out the effect of war upon Home Rule.

What more certain to impair the chances of a good settlement of Home Rule than the bottomless agitation of a great war?" "I saw no standard-bearer. . . . The motives of Lloyd George were a riddle. . . . In plain truth the Liberal party was already shattered and could not win the approaching election, mainly owing to Lloyd George himself. He was on the eve of the greatest mistake of his life. . . . For me at any rate—the future being what it must inevitably be—no choice was open." It is an extraordinary revelation of a man's mind, and of the various considerations which confront him at such a time as this—Home Rule, the Liberal party, Lloyd George—amid chaos. Grey was simpler. He saw Germany a great "European aggressor, as bad as Napoleon"; and he put all else aside. And which was "right"?—as we say, somewhat ineptly. And who can ever tell? Only those brave spirits to whom that "truth" which is concealed from the rest of us is clearly revealed—by their own prepossessions. W.C.A.

Russia in the Economic War, by Baron Boris E. Nolde (Yale University Press, pp. xvi, 232), is published by the Division of Economics and History of the Carnegie Endowment for International Peace in the Russian Series of the *Economic and Social History of the World War*. The author brings to his task an authoritative knowledge of international law and an intimate acquaintance with Russia's foreign affairs. He reaches the conclusion that Russia, at the beginning of the war, had made no definite plans regarding the treatment of enemy nationals and of trade across German and Austrian borders. Increasingly severe measures, however, were adopted by the Russian government as a result, first, of the Russian people's demand for retaliation and, second, of the Allies' efforts for economic coöperation. In an attempt to throw off the "German yoke," the Russian government expropriated land owned by enemy nationals and liquidated a number of enemy commercial firms and industrial undertakings. It took steps to prevent the export of goods to enemy countries; its policy toward imports from Germany, however, was characterized by leniency. War legislation became merged in Soviet legislation in 1917, and intercourse between Russia and her enemies was reëstablished by the treaties of Brest-Litovsk. Mr. Nolde's clear and concise study should prove of interest to the student of international law and of international trade. Its value is increased by the documents contained in the appendix. V.A.M.

The last fruits of the late Professor Cephas D. Allin's prolonged and highly productive study of the affairs of the British Empire is a monograph entitled *Australasian Preferential Tariffs and Imperial Free Trade* (University of Minnesota Press, pp. 228). An earlier monograph, published in 1918, traced the tariff relations of the Australian colonies from their beginnings to the colonial conference of 1863. The present study carries the story forward to "the rise of the spirit of Australian nationalism"—more specifically, to the passage of the Australian Colonies Customs Duties Act at Westminster in 1873, marking, as Professor Allin rightly says, the fiscal emancipation of the colonies to which the measures applied. The study is based on original sources throughout and, taken in conjunction with Professor Paul Knaplund's recent *Gladstone and Britain's Imperial Policy*, may be regarded as definitive for the period. Along with the monograph is appropriately printed an interesting memorial sketch of Professor Allin prepared by his colleague, Professor William Anderson.

The Council on Foreign Relations has published a new edition of its *Political Handbook of the World* (Yale University Press, pp. 198), edited by Malcolm W. Davis and Walter H. Mallory. As in earlier editions, there are carefully authenticated lists, country by country, of principal public officials, parties and their programs, and newspapers (with political affiliation, if any) and press associations. For the first time, the United States is included. There are few more useful handbooks for students of political and world affairs.

Europe: A History of Ten Years (Macmillan, pp. vii, 428), by Raymond L. Buell, covers the period from the treaty of Versailles to 1928. The author lays special stress on governmental developments and problems, political parties, and international relations. In preparing the material the author had the assistance of the research staff of the Foreign Policy Association. The book should furnish excellent collateral reading for a course in European governments.

Among various new collections of constitutional texts is B. Mirkine-Guetzevitch's *Les Constitutions de l'Europe Nouvelle* (Librairie Delagrave, pp. 412). As the title indicates, only the new constitutions of Europe are included—some seventeen in number. Among the German Länder, only Prussia and Bavaria are represented. All of the documents appear in French. The book opens with an excellent fifty-five page "synthetic essay" on the characteristics and tendencies of the constitutions as a group.

The Economic, Financial, and Political State of Germany Since the War (Yale Univ. Press, pp. 134) comprises a series of six lectures delivered at the Williamstown Institute by Dr. Peter P. Reinhold, formerly finance minister of the Reich. Into the story of the vicissitudes of German finance before and after the stabilization of the mark is woven the history of German reparations down to the Dawes Plan and the consequent problem of transfer.

Although *The History of British Civilization*, by Esmé Wingfield-Stratford (Holt, two vols., pp. 1332), does not cover the subject from the standpoint of the political scientist, and although the subject of constitutional development may at times seem to be neglected, the interestingly written volumes offer a new view of a hackneyed subject.

INTERNATIONAL LAW AND RELATIONS

Not only the source material but also the secondary writings on the problem of war origins have, in the past decade, become so numerous that only the specialist can hope to keep abreast of the literature. Under these circumstances, *The Origins of the World War*, by Sidney B. Fay (Macmillan, two volumes, pp. xxii, 551; xvi, 577), is to be the more warmly welcomed. It may be said without fear of contradiction that for all general purposes it contains everything that the average interested person need know about this intricate and important subject. The author has spent more than eight years in the preparation of this exhaustive treatise; he has worked over all the source material and is thoroughly familiar with all the previous treatments of the subject. He is, furthermore, a writer of singular balance—open-minded, clear, and of sound judgment. His book is, beyond question, the best single work on the subject in any language. Of the two volumes, the first is devoted to the period from 1870 to 1914, while the second treats of the July crisis which led to the outbreak of the conflict. In the first the reader will find a compact systematic history of the development of international relations after the Franco-German War, the emphasis being placed on the period of the great crises from 1905 to 1914. The treatment of the complicated question of English obligations to France and the account of the involutions and evolutions of the Near Eastern situation appear to the reviewer to be particularly masterly. In the second volume the diplomatic negotiations following the assassination of the Archduke are described in great detail, but no effort is made to rank the powers according

to their responsibility. Fay contents himself with a summary of the policy of each of the leading participants, pointing out what seem to him to have been the chief commissions and omissions. It need hardly be said that he rejects entirely the theory of the sole responsibility of Germany, and that he regards Article 231 of the Versailles Treaty as entirely unfounded in fact. W.L.L.

In an historical survey entitled *The Washington Conference and After* (Stanford University Press, pp. vii, 443), Yamato Ichihashi, who is a professor of Japanese history in Stanford University, has made what he terms an objective study of the international situation surrounding the Washington Conference. The result is not polemic, but like most political studies it is far from qualifying as an objective piece of work. Indeed, much of its value lies in its subjectivity. It turns out to be a defense of Japan, but not without an occasional lashing. Both Great Britain and the United States are sympathetically dealt with, perhaps with too great leniency. In general, the work includes an account of the events leading up to the Conference and a detailed study of the conference itself, with a critical estimate of its achievements. The chapters dealing with the limitation of armaments are rather eclectic, being given over more to a collection of opinions than to an independent, critical analysis. By far the most interesting chapters in the book are those dealing with the Pacific and the Far East. M.W.R.

The Macmillan Company has brought out *A History of Christian Missions in China* by Kenneth Scott Latourette (pp. xiv, 930). Three-quarters of a century ago, when Abbé Huc wrote his *Christianity in China, Tartary, and Tibet*, Catholic missions in the Chinese Empire were maintaining but a precarious existence, while Protestant activity was represented only by a handful of workers located at the treaty ports. Since the days of Huc, much has been written—by critics and by advocates—on the subject of Christian missions in China; but it has remained for Professor Latourette to put into a single work a scholarly and authoritative treatment of this phase of China's relations with the western world. The care with which the subject is covered may best be illustrated by the author's allotment of space to the various periods of time: 281 pages are devoted to the history of early Christianity and of modern events down to the treaty settlement of 1856-60; the Boxer episode ends on page 526; the out-

break of the World War appears on page 686; and events since 1914 are covered in the final 157 pages of the text. Pages 845-899 contain an extremely thorough bibliography, which, with the wealth of footnote material, makes the book of inestimable value to all students of modern Chinese history. G.N.S.

The proceedings of the Academy of Political Science in the City of New York for January, 1929, contain a series of addresses and papers on *The Preservation of Peace* (pp. 131), presented at the annual meeting of the Academy on November 23, 1928. These deal largely with the Kellogg Peace Pact and methods for the settlement of international disputes.

The University of North Carolina Press has issued a debate handbook on *The World Court* (pp. 104), compiled by E. R. Rankin.

LOCAL GOVERNMENT

The New Day in Housing (John Day, pp. vii, 208), by Louis H. Pink, a member of the New York State Housing Board, narrates in interesting fashion what the European cities of London, Amsterdam, Brussels, Cologne, Frankfort, and Vienna have done to improve housing conditions; discusses the results of the garden city movement abroad and in the United States; describes the activities of the Metropolitan Life Insurance Company, John D. Rockefeller, Jr., and the Amalgamated Clothing Workers in building tenements in New York City; and explains what New York is attempting to do through the State Housing Board to solve the problem. The author is an ardent advocate of coöperative housing, tax exemption, and public aid to housing. The book contains over fifty excellent illustrations and includes an introduction by ex-Governor Alfred E. Smith.

The City Manager Plan in Iowa (pp. 152), by John M. Pfiffner, is a detailed study of the history and operation of that form of government in the thirteen Iowa cities and towns operating thereunder. In the author's opinion the manager plan has been a success. Although at least three cities have rejected the plan, none of the municipalities adopting it by charter has abandoned it. The study is reprinted from the October, 1928, and January, 1929, numbers of the *Iowa Journal of History and Politics* (Iowa City).

Among principal features of *Proceedings of the Seventeenth Annual Meeting of the Governmental Research Association*, published by the

Association (mimeographed, pp. 151), are papers by Stephen B. Story on municipal research and the city manager, Charles A. Beard on the city's place in civilization, Joseph P. Harris on the practical workings of proportional representation in American cities, Wylie Kilpatrick on instruments for civic reporting, and Herman C. Beyle on objective studies as a basis for fundamentalized government reporting.

Those interested in the legal aspects of municipal government will find a useful article on "Discretion of Courts in Actions to Dissolve Municipal Corporations," by Charles W. Tooke, in the January number of the *New York University Law Review* (pp. 112-128).

Students of municipal history will find much of interest in T.R.S. Broughton's *The Romanization of Africa Proconsularis* (Johns Hopkins Press, pp. viii, 233). The book deals with Roman government and administration in the province of Africa and concludes with a lengthy chapter on "The African Municipal Anomalies."

POLITICAL THEORY AND MISCELLANEOUS

Whither Mankind? (Longmans, Green, pp. vii, 408), edited by Charles A. Beard, who contributes the introduction and epilogue, contains sixteen stimulating essays by such well known persons as Bertrand Russell, Beatrice and Sidney Webb, Howard L. McBain, Emil Ludwig, Havelock Ellis, James Harvey Robinson, John Dewey, and Hendrick W. Van Loon on subjects ranging from business, labor, law, and government to religion, the arts, and philosophy. The unifying assumption underlying the various essays is that "science and the machine have changed the face of the earth, the ways of men and women in it, and our knowledge of nature and mankind. . . . Old rules of politics and law, religion and sex, art and letters—the whole domain of culture—must yield or break before the inexorable pressure of science and the machine." The volume rejects the pessimistic views of such writers as Chesterton, Belloc, and Spengler. While recognizing the evils brought by science and machines, the several authors "do not concede that any other system, could it be freely chosen in place of machine civilization, would confer more dignity upon human nature, make life on the whole richer in satisfactions, widen the opportunity for exercising our noblest faculties, or give a sublime meaning to the universe in which we labor. On the contrary . . . they express a belief that there is in the new order of affairs a

prospect for life on higher levels." The chapter on law and government is written by Professor H. L. McBain, who concludes that although there has been a reaction in Europe against state socialism, it appears that the "field of government ownership and operation will slowly widen" as a result of the machine system; that regulation will be administrative rather than judicial; that laws will multiply rather than diminish; that when public courts "fail in speed and justice, courts of private conciliation will supplement the tribunals of government," and that the "establishment of collective interest functioning through the state, instead of reducing always the freedom of the individual, often enlarges it by placing on his side the services of a Leviathan, Government, a clumsy and frequently a tyrannical agency, but still one very useful in holding at bay the principal private associations which flourish in our civilization" (quoted from Dr. Beard's "Epilogue," pp. 406-407).

Current society, which labels certain business enterprises as "public utilities" and imposes on them special duties of service, requires them to serve at "reasonable rates." Reasonable rates for particular services are still undefined, but so far as the rates allowed to be charged aggregate a reward for the whole of the utility's service, we have achieved a constitutional formula. There must be a "fair return" on the "present value of the property devoted" to the service. "Value" translates into different figures according to the theory used in defining it. A generation ago, the present cost of reproduction theory gave figures lower than those of the original investment. Today, valuation on the reproduction theory runs into dollar totals which are higher than those of the investment; and public authority has lately sought to read "value" in terms of the investment dollars. Though the states have been barred from so doing, the Interstate Commerce Commission, in the famous O'Fallon railway case, has valued substantially on the lower level. As the "spread" between the figures which may be reached on the respective theories as applied to the railroads as a whole is something like ten billion dollars, the Supreme Court has of course been appealed to. Its decision is now pending. *Public Utility Rate Making*, by Taylor E. Groninger (Bobbs-Merrill, pp. xxii, 381), presents the general problem outlined above; and it is so up to date as to include the Commission's O'Fallon decision. Though the author is a lawyer writing largely for lawyers, his work is a valuable collection of leading judicial pronouncements, from the

basic *Munn v. Illinois*, which started the modern rate-setting practices, to date. Questions as to just how to arrive at the actual rate figures did not become acute until 1898, when *Smyth v. Ames*, as Mr. Groninger points out, set forth the formula in vague terms. Getting precise content into it has given rise to vast litigation during the last thirty years. Of all this Mr. Groninger shows enough to make a readable history of one of the greatest of our present politico-economic problems. G.H.R.

The writer of this book-note, who has long felt that law should be taught non-technically, and as a cultural subject, in any complete curriculum of the social sciences, finds a particular satisfaction in *The Book of English Law*, by Edward Jenks (Houghton Mifflin, pp. xix, 460). Its preface is a throw back to that of Sir William Blackstone who in 1753 announced lectures not only for lawyers to be, but also for "such others as are desirous to be in some degree acquainted with the constitution and polity of their own country." Dr. Jenks says that his lectures are "to be for the benefit, not, in the main of professional lawyers, actual or potential, but of laymen interested in the place of law in modern communities and its influence on economic and social polity." The foreword by Lord Atkin states: "The production of the book is a step toward securing the recognition of some teaching of law as a factor in a general liberal education." Though Dr. Jenks deals only with English law as it is administered in England, he paints a neat and clear-lined picture of the nature and different kinds of law in general, and of the forms—judicial or statute—of English law. Under "The Machinery of English Law" he discusses the court system, the legal profession, and the "administration of justice" by the machine as outlined. Other headings are "The State and Justice," "The Criminal Law," "The Civil Law," under which headings he discusses the minutiae without being too detailed to defeat his purposes. He appends a bibliography of the more readable of the legal treatises and closes with a good working index. The whole is work of the sort to be expected from one whose place as a legal historian is so thoroughly assured by previous labors. G.H.R.

In *Trade Associations: The Legal Aspects* (Central Book Company, pp. 271) Benjamin S. Kirsh, a lawyer who is not blind to economic forces, presents a suggestive examination of the attitude of the courts toward trade associations. It is one of the few books of recent years

that emphasise the need for treating each anti-trust case upon its merits because of the great variation in the facts from case to case. Mr. Kirsh wisely recognizes that decisions ultimately depend upon a very real exercise of judgment by the courts. As Mr. Justice Holmes would say, "the worth of competing social ends" must be decided, and this cannot be done merely by an appeal to a statute-made criterion. Once the qualification of "reasonableness" is introduced, the public interest must be kept in view, and it becomes impossible to generalize upon the decisions before making sure that the economic facts are identical. Many apparent inconsistencies in the courts are to be explained on this ground.

R. O.

Freedom in the Modern World, published by Coward-McCann, Inc. (pp. xii, 304), contains a collection of lectures delivered at the New School for Social Research. The volume is edited by Horace M. Kallen, who likewise supplies introductory and concluding chapters. The editor states that for certain vested interests, whether social, economic, or religious, "the truth has always been for them the rehearsal of some advantageous lie." And, it is stated, "with respect to the social and political sciences the institutions of higher learning show themselves to be as definitely, if more subtly, seats of monopolistic orthodoxy as any sectarian theological school." The lectures in this volume, however, purport to be delivered from "an academic forum where honest scholarship in the social sciences" is "free and untrammelled." They deal with topics such as liberty and the law, freedom in the fine arts, personal liberty, political liberty, and freedom of the press. Among the contributors are to be found the names of Clarence Darrow, Silas Bent, Zechariah Chafee, Max Eastman, and John Dewey.

E.P.H.

"We are governed, our minds are molded, our tastes are formed, our ideas suggested, largely by men we have never heard of." From this basis, Edward L. Bernays, in his latest book *Propaganda* (Horace Liveright, pp. 159), proceeds to describe the mechanism and the methods used by the special pleader in controlling and manipulating the "public mind." A new propaganda is at work today. "It takes account not merely of the individual, nor of the mass mind alone, but also and especially of the anatomy of society, with its interlocking group formations and loyalties." The author shows how the public relations counsel works upon and through these groups rather than

by appealing directly to the individual. The part that propaganda plays in the relations between the public and business, politics, education, social service, art, and science is sketched in brief chapters. Throughout the book emphasis is placed again and again upon the importance of the "public relations counsel." In fact, it is proposed that there be added to the cabinet a "secretary of public relations" whose function it will be to "interpret America's aims and ideals throughout the world." One is inclined to wonder if this little volume is not itself a venture in applied propaganda. Here, as in *Crystallizing Public Opinion*, Mr. Bernays depicts the work of the press agent as a "profession." Light in touch, spirited, with a wealth of specific examples to illustrate his points, but with not a few blithe generalizations that one might well challenge, the author nevertheless presents a book that those concerned with public opinion will read with interest.

E.P.H.

Falsehood in War-Time, by Arthur Ponsonby, M.P. (E. P. Dutton and Co., pp. 192), is a little book containing a collection of lies the proportions of which are quite out of keeping with the size of the volume. Falsehoods, subtle and crude, convincing and fantastic, are herein arrayed as evidence of the important rôle played by prevarication as a psychological factor in war-time. The nature of these fabrications is indicated by their titles: the crucified Canadian, the corpse factory, the criminal Kaiser, the Belgian baby without hands. There were circulated intellectual lies for the intelligent and blatant lies for popular consumption. Official connivance was responsible for many. But more extraordinary than the lies themselves was the general credulity of the public in accepting them. One can only agree with the author that "the amount of rubbish and humbug that pass under the name of patriotism in war-time in all countries is sufficient to make decent people blush when they are subsequently disillusioned." E.P.H.

Two recent books dealing with labor and government in England and the United States respectively are *The Story of Trade Unionism: From the Combination Acts to the General Strike*, by Robert M. Rayner (Longmans, Green, pp. ix, 277), and *The Labor Movement in the United States, 1860-1895*, by Norman J. Ware (Appleton, pp. xviii, 409). Among the topics dealt with in the former volume are the rise of the Labor party, the effects of the Taff Vale decision, parliamentarism versus direct action, and the capture of the "government" by the

Labor party. Professor Ware's book is concerned largely with the "Order of the Knights of Labor" and emphasizes the relations of labor and politics. In the opinion of the author, the "Order" grew out of disillusionment with politics on the one hand and trade unionism on the other. Its most marked characteristics were reformism or propaganda by which an attempt was made to produce solidarity among the labor groups. The author considers that the "Order" also aimed at democracy among the laborers.

The first issue of the *Revue Internationale des Sciences Administratives* (pp. 215), published by the Permanent International Commission of the International Congress of Administrative Sciences, has been received. The journal contains several articles on important topics, such as the modernization of public accounting, administrative preparation of public service officials in Poland, and municipal home rule in the United States. Almost one hundred pages are devoted to reviews of books, reports, and other documents, and there are forty-five pages of bibliography classified by both subject and country.

From Paris come two small books, *Les Problèmes de la Terre en Palestine* (pp. 226), by A. Granovsky, and *L'Allemagne et la Politique Européenne, 1890-1914* (pp. 229), by Frederic Stieve, both issued by Les Editions Rieder. The former book has already appeared in English. The latter is a defense of Germany's actions and policies and is another book attempting to allocate the blame for the recent war.

A useful contribution to the history of political thought and of social legislation is Henrietta C. Jennings' *The Political Theory of State-Supported Elementary Education in England, 1750-1833* (Lancaster Press, pp. vii, 159). The monograph was presented as a doctoral dissertation at Bryn Mawr College. It traces the conflict of ideas in England in the eighteenth and early nineteenth century relevant to the support of education by the state and closes with a chapter on the immediate antecedents of the initial parliamentary appropriation in 1833.

Professor Chilton R. Bush's *Newspaper Reporting of Public Affairs* (Appleton, pp. xi, 406) embodies a portion of the material used in a course of instruction in the School of Journalism at the University of Wisconsin. Its object is "to assist the prospective newspaper reporter to acquire the minimum amount of professional equipment needed

in the reporting of public business in the ordinary community." Successive chapters deal informingly with the courts, criminal and civil trials, bankruptcy proceedings, the federal building, the city hall, the county building, the police station, politics, and business and labor.

What is Socialism?, by Jessie W. Haughan (pp. ix, 192), is the third of the series of *Outline of Social Philosophies* published by the Vanguard Press. The author includes a chapter on "American Socialism in the Twentieth Century." There is also a brief biographical index or directory of names associated with the socialist movement and a selected bibliography. The treatment is somewhat superficial, and the chief value of the book is as a catalogue of facts.

Our Own Times (pp. vii, 382), by H. C. Thomas and William A. Hamm, is a brief outline of world history from 1830 to the present time and is the final volume of "The A.B.C. of History" series published by the Vanguard Press. The other two volumes were entitled *The Foundation of Modern Civilization* and *Civilization in Transition*.

Dean Gleason L. Archer, of the Suffolk Law School of Boston, has written a *History of the Law* (Suffolk Law School Press, pp. 442) in which he attempts to trace the development of legal principles against the background of history. Part I covers ancient law, especially of Greece and Rome; Part II deals with the English common law; and Part III traces the history of law in America. At the end of each chapter are numerous questions for review.

The National Industrial Conference Board has issued another of its studies on the *Cost of Government in the United States* for 1926-27 (pp. 109). This shows a further increase in the total of governmental expenditures, especially in state and local expenditures for schools and highways. The debt and taxes of the national government are being steadily reduced, but those of the state and local governments continue to increase. Other recent reports of the National Industrial Conference Board are *The Shifting and Effects of the Federal Corporation Income Tax* (pp. 251), *A Picture of World Economic Conditions* (pp. 119), and *Public Schools and the Worker in New York* (pp. 180).

Double Taxation and International Fiscal Coöperation, by Edwin R. A. Seligman (Macmillan, pp. 203), is a review of lectures given by

the author at the *Académie de Droit International* at the Hague during 1927. One learns from the book that the problems of double taxation are not confined to the American states. An interesting phase of the work of the League of Nations is illustrated in Professor Seligman's discussion of the report on double taxation made by a special committee of economic experts, of which he was a member, to the Financial Committee of the League.

As might be foretold from the title, *The Return to Laissez Faire*, by Ernest J. P. Benn (Appleton, pp. 221), is an argument against the extension of governmental activity and interference in England and a plea for a return to what the author terms "individualism." In his opinion there is more individualism in the United States than in England. Public aid to housing and the growing burden of bureaucrats are the especial targets of the author.

The New Jersey State Chamber of Commerce has issued a detailed and profusely illustrated book, *New Jersey: Life, Industry, and Resources of a Great State*, edited by Floyd W. Parsons (pp. xii, 404). Students of state government will find of interest the section devoted to the general history of the state, governmental organization, and revenues and taxation. The part on governmental organization was evidently written by some one familiar with the fundamental principles on which the government was established as well as with its actual workings.

Ex-Governor Gifford Pinchot, of Pennsylvania, has issued a substantial pamphlet entitled *The Power Monopoly, its Make-up and its Menace* (pp. 256). Following a brief general discussion, the bulk of the pamphlet presents data on a large number of power corporations, showing their combinations and interconnections.

RECENT PUBLICATIONS OF POLITICAL INTEREST BOOKS AND PERIODICALS

CLARENCE A. BERDAHL

University of Illinois

AMERICAN GOVERNMENT AND PUBLIC LAW

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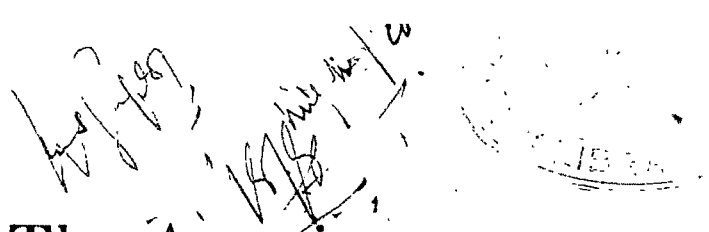
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THE DEMOCRATIC DOGMA AND THE FUTURE OF POLITICAL SCIENCE*

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Everyone has heard the gibe that the specialist is a man who knows more and more about less and less, while a sociologist is one who knows less and less about more and more. Another quip has it that while psychology is all data and no conclusions, sociology is all conclusions and no data. Political science itself has not escaped a certain amount of cheap disparagement from those who know little or nothing about it. Thus a political scientist has been described as one who among politicians is reckoned a scientist, and among scientists is reckoned a politician; or, indeed, as one who is called a political scientist because he is neither—an obvious paraphrase of Voltaire's famous sarcasm regarding the Holy Roman Empire. At any rate, the time has come when a certain group of political scientists have wearied of such gibes, to say nothing of that condescension which they think they detect in the attitude of laboratory scientists toward them; and they have registered a vow to convert political science from a "normative" or "telic" science, as it has been variously called, into a natural science, into a science which will hereafter be printed in lower case instead of in upper, and will, moreover (the height of ambition of all true sciences) be able to predict the future

* This paper was read last January before the Chinese Social and Political Science Association of Peking and the Friends of Political Science of Yenching and Tsing-hua Universities.

just as astronomy, physics, and chemistry are able to do—not to mention astrology, alchemy, and palmistry. Nor is this newly conceived ambition the product merely of discontent; it is rather more, perhaps, response to the beckoning of opportunity—the opportunity spelled by the rise of the behavioristic psychology. For, if human behavior in general can be made the subject of scientific measurement leading to prediction, why cannot that particular portion of it which has political consequences? At this point another consideration enters.

The father of political science based his work on the doctrine of the inequality of man and a defense of slavery. But certainly until recent years the connection of modern political science with Aristotle has been highly discontinuous, not to say casual. To the *Politics* are traceable the classification of governments into those of the one, the few, and the many; the doctrine of three intrinsically distinct functions of government; and the earliest formulation of the principle of a government of laws and not of men. But even for these ideas the indebtedness of American writers has usually been indirect, while on the other hand in England, where the *Politics* is still read in university courses, the term political science is an exotic; nor is there a single English periodical which bears this label. The fact of the matter is that modern political science—the normative, telic science—is a belated offspring of eighteenth-century rationalism, and has taken all its ideals from that source. It sprang from the same matrix as the democratic dogma, and it has heretofore fought in the same ranks and for the same causes as its older relative. So the question arises, what would the consequences be if political science, renouncing its rôle of crusader, became a mere laboratory science; and especially if it did so in alliance with behaviorism, which repudiates, if not with scorn and contumely, at any rate with scientific finality, the most fundamental assumption of the democratic dogma, the assumption that man is primarily a rational creature, and that his acts are governed by rational considerations?

I. THE INTELLECTUALIST FALLACY

It becomes pertinent at this point to devote a word or two to the opening phrase in the title of this paper. "The democratic dogma" is, of course, the doctrine that the people should rule. But why should they? Not because they wield the physical forces of society, which in this modern machine-gun era they rarely do, but because they know their own good, and act upon their knowledge, and so know the most widely spread public good, which they will endeavor to bring to pass. The dogma involves, it will be noted, not a few questionable assumptions, but the only one of interest to us in this connection is the one already mentioned, that men act on reason.¹

In his *Human Nature and Politics* Professor Graham Wallas has collected many interesting illustrations of what he terms "the intellectualist fallacy" as it has found utterance in the field of political thought. Contradicting the utilitarian idea that it was possible to produce a science of government from the principles of human nature, Macaulay, writing in 1829, himself accepted the major premise of Utilitarianism. "What proposition," said he, "is there respecting human nature which is absolutely and universally true? We know of only one, and that is not only true but identical—that man always acts from self interest. When we see the actions of a man we know with certainty what he thinks his interest to be."² Burke's oft-quoted definition of "party" was from the same mint: "A body of men united for promoting by their just endeavors the national interest upon some particular principle in which they are all agreed."³ However applicable this definition may be to new parties, third parties, and revolutionary parties, few parties that have once sampled the sweets of office would survive its acid test. Yet another aspect of the intellectualist outlook is revealed by the invocation in the

¹ Thus, I do not consider it necessary for my purpose to deal with the contention of the Groupist philosophers that men always seek the interest of some group less than the state.

² Quoted in Graham Wallas, *Human Nature in Politics*, p. 22.

³ *Ibid.*, p. 83.

Declaration of Independence of certain "self-evident truths," and its concomitant solicitation of "the decent opinion of mankind." For in these words we perceive not only the Newtonian background of eighteenth-century political rationalism, but its assumption of the uniformity of human thought and the universal compulsion thereupon of the principles of correct political reasoning.

And the social product—or, speaking more accurately, the algebraic sum—of individual reasons was, in the rationalist cosmology, that which is termed "public opinion." It is true that earlier (as also later), public opinion was regarded as connoting anything but intellectual processes; but in the period of which we are now speaking, when anyone used this term he was at once understood to mean the highest fruition of human mentality when its attention was directed to public questions, and to convey that the prompt enactment of its mandates into law was the be-all and end-all of political association, as well as the conclusive test of excellence in government.

Again we draw an illustration from Professor Wallas's pages. It is culled from the speech of James A. Garfield before the convention which nominated him for the presidency. Garfield was evidently somewhat troubled by certain things he had witnessed in the convention, things that did not fit very well into his rationalistic presuppositions; so we find him comforting himself and his auditors with the reflection that the final decision lay with a body of men whose spirit of reasonableness and rectitude of intention were not open to impeachment. "I have seen," the passage runs, "the sea lashed into fury and dashed into spray, and its grandeur moves the soul of the dullest man. But I remember that it is not the billows but the calm of the sea from which all heights and depths are measured Not here in this brilliant circle where fifteen thousand men and women are gathered is the destiny of the Republic to be decreed for the next four years . . . but by four millions of Republican firesides where [are] thoughtful voters with wives and children about them, with the calm thoughts inspired by love of home and country, the history of

the past, the hopes of the future, and the knowledge of the great men who have adorned and blessed our nation in the days gone by. There God prepares the verdict that shall determine the wisdom of our work to-night."⁴

To be sure, there are touches here—lapses into sentimentalism—which an eighteenth-century rationalist could only deplore. Would not wife and child be apt to disturb the cogged premises of intellectualist thought? What, moreover of the implication that only Republicans have "calm thoughts"—and this before the days of "keeping cool with Coolidge?" And, worst of all, what of the tactics of giving Deity a finger in the pie? That would have spoiled the picture entirely for an eighteenth-century Deist. But at least we are assured that the final result will be all right. It will be *as if* "calm thoughts" alone determined it.

The *als ob* way out of difficulties is also the one taken by Bryce in his *American Commonwealth*. "In the ideal democracy," he wrote, "every citizen is intelligent, patriotic, disinterested, his sole wish is to discover the right side in each contested issue, and to fix upon the best man among competing candidates. His common sense, aided by a knowledge of the situation of his country, enables him to judge wisely between arguments submitted to him, while his own zeal is sufficient to carry him to the polling booth."⁵ By "ideal democracy" Bryce evidently meant a realizable ideal, considering the facts of human nature. Certainly, as Graham Wallas comments, "no doctor would begin a medical treatise by saying 'the ideal man requires no food and is impervious to the action of bacteria, but this ideal is far removed from the actualities of any known population.' No modern treatise on pedagogy begins with the statement that 'the ideal boy knows things without being taught them, and his sole wish is the advancement of science, but no boys at all like this have ever existed.'"⁶ No doubt, as Bryce himself owned, the *American Commonwealth*, regarded as the

⁴ Graham Wallas, *Human Nature in Politics*, p. 111.

⁵ *Ibid.*, p. 126.

⁶ *Ibid.*, p. 127.

ideal democracy, had its limitations. "It is rather sentiment than thought," he wrote, "that the mass can contribute," and in the political beliefs of nineteen out of twenty there is "little solidity and substance."⁷ And yet, for all that, the democratic régime in the United States was a régime of reason.

A subsequent chapter is entitled "How Public Opinion Rules in America,"⁸ and still later the statement is added: "There is no class or set of men whose special function it is to form and lead opinion. The politicians certainly do not; public opinion leads them."⁹ Then, quoting Lincoln: "With public sentiment on its side, everything succeeds; with public sentiment against it, nothing succeeds." Thereupon, on his own account, Bryce proceeds: "Public opinion is a sort of atmosphere, fresh, keen, and full of sunlight, like that of the American cities, and this sunlight kills many of those noxious germs which are hatched where politicians congregate;" and, "It is the habit of breathing as well as helping to form public opinion that cultivates, develops, trains, the average American."¹⁰ The final sentences of Bryce's elaborate analysis read: "Public opinion grows more temperate, more mellow, and assuredly more tolerant. Its very strength disposes it to bear with opposition or remonstrance. It respects itself too much to wish to silence any voice."¹¹

This was written nearly fifty years before the campaign of 1928! In his last work, incorporating his final assessment of the world's great democracies, Bryce still recorded a favorable view of the quality of public opinion in America as compared with other democracies; but his complimentary verdict was seriously qualified by his discovery of the growing indifference of the masses the world over toward political questions. "The lapse of years," he says, "has given us a fuller knowledge. It is time to face facts and to be done with fancies The proportion of citizens who take a lively and constant interest in

⁷ *American Commonwealth* (1910), vol. 2, p. 254.

⁸ *Ibid.*, chap. 78

⁹ *Ibid.*, p. 308.

¹⁰ *Ibid.*, p. 367.

¹¹ *Ibid.*, p. 376.

politics is so small, and likely to remain so small, that the direction of affairs inevitably passes into the hands of a few."¹² In the end, he challenged Aristotle's classification of governments. There is, he found, only one kind of government, whatever the external forms, "the government of the few."

Two other expositions of public opinion from the rationalist point of view demand passing notice. Of Ostrogorski's *Democracy and the Organization of Political Parties*, which appeared in 1902 and represented the results of fifteen years' observation of the party system at work in America and England, I quote Professor Wallas's pertinent criticism: "The instances given in the book might have been used as the basis of a fairly full account of those facts in the human type which are of importance to the politician." Instead, they are "regretfully contrasted with 'free reason', 'the general idea of liberty,' 'the sentiments which inspired the men of 1848'; and the book ends with a sketch of a proposed constitution in which the voters are to be required to vote for candidates known to them through declarations of policy 'from which all mention of party is rigorously excluded.' One seems to be reading a series of conscientious observations of the Copernican heavens by a loyal but saddened believer in the Ptolemaic astronomy."¹³

The other work referred to is President Lowell's *Public Opinion and Popular Government*. The earlier pages of the book waft one back to the closing days of the eighteenth century as on a Whittall carpet endowed with magic. Public opinion must be both "public" and "opinion"; and while opinion "need not be entirely rational," it does denote two things: first, a process of reasoning, and secondly, knowledge of facts to furnish the basis of the reasoning. The writer then proceeds to show, and quite convincingly, how little likely these conditions are to be realized when the electorate at large attempts to legislate.

II. THE LESSON OF POPULAR INDIFFERENCE

As may have been discovered from what has already been said, modern attack on the democratic dogma has proceeded from a two-fold basis: first, from the basis afforded by the

¹² *Modern Democracies*, vol. 2, p. 549.

¹³ *Op. cit.*, pp. 124-125.

phenomenon noticed by Bryce of the growing indifference of the voter; secondly, from the basis uncovered especially by Wallas in his challenge of the notion that the voter, when he does condescend to show an interest, will act on rational considerations. As to the former phenomenon, American experience is especially illuminating, and so may be briefly recounted at this point.

The progress of the democratic dogma in the United States was marked by a double process: first, the extension of the franchise, a development apparently brought to an end by the Nineteenth Amendment, though not certainly, since children still remain without votes, to say nothing of the parlor furniture; secondly, by the constant increase of the burden of the voter. Perhaps it was thought that as the electorate was enlarged it became proportionately capable of bearing a heavier load—an erroneous assumption, since to each voter the burden is cumulative. The first thing that happened along this line was the conversion in the second quarter of the last century of nearly all local and state offices into elective offices, with the result that it became impossible for the voter to inform himself, even if he were disposed to make the effort, as to the fitness of more than a small fraction of the candidates for office. What, however, the voter was unable or unwilling to do for himself, the professional politician was only too glad to do for him. The final outcome is stated graphically by Professor Kales in his witty brochure entitled *Unpopular Government in the United States*: "The elector by being required to vote too much has been compelled to surrender to a large extent his right to vote at all Formerly people were disfranchised when they were given no opportunity to vote. Today they are disfranchised by being required to vote too much. Formerly the legal rulers of the disfranchised mass were selected for them by the few without equivocation. Today our legal rulers are selected for us by the few through the subterfuge of the mass casting ballots according to the direction of the few." For aristocracy has been substituted politocracy.¹⁴

¹⁴ Pp. 24-25.

The only criticism that can be made of this statement of the situation is that it impliedly exaggerates the voter's interest. That political indifference in the United States is by no means due to the complexity of the task the voter is confronted with is shown by the fact that it operates most conspicuously in the presidential elections. In the election of 1924 less than fifty per cent of the eligible vote was cast, and in that of 1928 less than fifty-five per cent. No,—American political indifference is due chiefly to circumstances as to which agitation for the "short ballot" is little apposite. It arises from the average American's sense of well-being and his consequent confidence in his governors, from the general homogeneousness of political sentiment as to fundamentals among the American population—at least in a period of prosperity—and, above all, from the fact that, with the incoming of radio, the movie, and cheap motor transportation, politics has largely lost its capacity to entertain and amuse.

This, however, political science, still blinded by its inherited intellectualism, has failed to appreciate; and while on the one hand it was launching campaigns for fewer elective offices, on the other hand it was lending aid and comfort to the movement for the initiative, referendum, and recall. "The cure for democracy is more democracy," was the sage shibboleth of the supporters of the I. and R., a teaching which has received justification in certain instances, e.g., Italy and Spain, where, applied as a vaccine, the democratic virus has at last produced an apparently complete immunity. In the United States, on the other hand, democracy had long since become the normal state of health of the body politic; so what possible pertinence could the therapeutics of prophylaxis have in such a case? Besides, *similia similibus curantur* never did mean—until the excellent Hahnemann happened to run across this tag-end of Latin somewhere—that an ailment was to be cured by taking more of it, but only that when a substantially similar disease to the one just cured is met with, like remedies should be employed. What a torrent of error from so slight a source; and how the *corpus humane* and the *corpus politicum* have suffered! In the ideal

democracy the study of the classics will not be neglected! Meantime we may note for the consolation of the over-worked voter (actually a sybaritic loafer) Bernard Shaw's conclusion that "government presents only one problem, the discovery of a trustworthy anthropometric measure." Give the intelligence-tester time, and he will relieve the voter of both the ballot's burden and the political parasite.

III. THE LESSON OF MASS SUGGESTIBILITY

The indifference of the masses toward their political rights and duties—an indifference which paradoxically increases with the importance of governmental intervention in daily life—forms a crucial test of the assumptions of eighteenth-century political thought. But the question remains, What is the quality of popular political response when it is forthcoming? What aptitudes does it reveal on the part of the political animal? In general, the answers to this question may be said to boil down to two: first, the political animal has a pronounced liking for non-rational inference, that is to say, for conclusions not drawn from premises that are statable in terms of public interest, or even, for that matter, of his own interest; secondly, he is a highly suggestible creature, with the result that it becomes a very simple matter for those who know the game, as the professional politician, advertising expert, and paid propagandist very well do, to plant in his mind (the word "mind" is used subject to withdrawal later on in deference to Dr. Watson) just those premises, prejudices, "stereotypes," which can be counted on to produce in such a mind the kind of inference that said politician, advertising expert, or propagandist wishes to have produced.

As every student of political history is aware, there never was a time when the *credo* of democracy escaped challenge. There were reactionaries even in early days. One of these was Alexander Hamilton, who on one occasion asserted that while man is no doubt a reasoning being he is not a reasonable one; and on another refuted the slogan "*vox populi vox dei*" with the blunt assertion: "Your people, sir, is a great beast." A con-

temporary reactionary, equally distinguished, was Edmund Burke, although he is also quotable, as we have seen, on the other side of the question. "Politics," said Burke, "ought to be adjusted not to human reasoning, but to human nature; of which the reason is but a part, and by no means the greatest part."¹⁵ The anti-intellectualist criticism has never been put more completely or more compactly. The French Revolution definitely fixed Burke's attitude.

Nowadays, anti-intellectualism has become a philosophy of life, and the disparagement of reason—as, for example, in the case of Bergson—a species of religion. This could never have come about solely on the warrant of a few political pessimists, however eminent, nor even from the support lent by the observed facts of human behavior. Anti-rationalism has won out in the nineteenth and twentieth centuries for the same reason that rationalism triumphed in the two preceding ones, i.e., because of the sustenance it has drawn from the intellectual atmosphere of the period. For anti-intellectualism is itself highly intellectual. Political rationalism was a growth of the period when the conception of the Newtonian physics dominated human thought, a science which was preponderantly mathematical and deductive. The thesis of the essential irrationality of the political animal has been, I will not say supported, it has been rendered inevitable, by the Darwinian biology. This is so for several reasons. The Darwinian doctrine of evolution by the slow accumulation of slight differences is necessarily hostile to any suggestion of sudden or brilliant change due to the intervention of mind, whether human or divine. "You cannot add a cubit to your stature by taking thought" is its motto; and this is just what eighteenth-century political thought asserted could be done. There was from the first an irrepressible conflict between the two points of view. Again, the Darwinian biology has stimulated the study of institutional origins. It is the mother of the modern science of anthropology, and the confirmation which anthropology lends to the assumption of man's rationality is, to say the least, not impressive. The study of taboo, totemism, primitive marriage

¹⁵ "Present State of the Nation." *Works*, vol. 1, p. 280.

customs, and the like, does show, it is true, a sort of innate tendency on the part of the human mind toward rationalization—but such rationalization! Fear, superstition, unalloyed silliness, are its ingredients. Finally, the Darwinian biology is also the mother of the modern science of psychology, which in the effort to justify its parentage has been driven increasingly to the necessity of corraling its subject-matter in the laboratory—in short, of reducing mind to matter.

But even before there was psychology there were psychologists, and especially political psychologists. One of the very greatest of these was Walter Bagehot, whose *English Constitution*, in its penetrating analysis of the political mentality of the English masses of that period (1860), anticipates most that has since been merely put into scientific jargon regarding non-rational inference and mass suggestibility. Sparks thrown off from Bagehot's wheel, both in this work and in his *Physics and Politics*, were fanned into a brisk flame by the Frenchman, Tarde, in his *Lois de l'Imitation*, and the latter's compatriot, Le Bon, in his famous *Psychologie des Foules* and his later *Psychologie Politique*. Tarde argued, in effect, that nothing creative comes from the people, that popular movements, fashions, vogues, all take their origin with the conspicuous few, the brilliant, the successful. Mass thinking, in short, is essentially parasitic and imitative. Tarde was thinking of the dispersed mass; Le Bon's studies were, to begin with, of the crowd, the public meeting, the mob. Its outstanding trait is its gullibility, its mysticism, its irresponsibility, its capacity for auto-intoxication by the exuberance of its own violent sentimentalism, generous at times as this may be. Instead of resulting in intellectual clarification, the assemblage of large numbers for political purposes is inevitably productive of obfuscation; as by an inherent gravitation, the mood of such aggregations strikes for the lowest common denominator of human behavior in the emotions. Nor is this true solely of crowds gathered in a single spot at a definite time; long sustained efforts to maintain mass alignments, like a war or a revolution (or a political campaign), produce all the symptoms of crowd psychology—its irrationality, its alarmism, its instability.

Politics Le Bon sums up as "a struggle of phantoms," and leadership as "genius in utilizing these."¹⁶

It was, however, in 1909, in Graham Wallas's *Human Nature in Politics*, that the cornerstone of "the new political science was laid." In this work, based upon the personal political experiences and first-hand observations of its author, interpreted in the light of wide reading, the intellectualist preconceptions of the nineteenth-century democracy are squarely challenged for the first time; and the promise is held out that, emulating political economy, which had long since cast aside "the economic man" of the "classical school," and so proceeding with a truer view of human nature, political science could hope to avail itself of quantitative methods and become a real science.¹⁷ Both the professional and personal vanity of the political scientist were thereby ministered to at one stroke. He foresaw a term to the condescension of honest-to-goodness laboratory scientists, and he foresaw himself elevated as never before to the post of professional adviser of the masses in matters political. Instead of being merely the heir of all the ages along with the rest of Western mankind, he would be trustee of this vast estate and the guardian of a populace destined to an indefinite nonage.

Wallas's approach to his problem is furnished by the Darwinian notion of struggle for existence, and by the old associationist psychology of the British school. By the struggle for existence human nature has been grooved with certain instincts, which are immensely more important in determining conduct than rational considerations; and the art of the politician consists simply in trading on the fact that one mental state can be relied on to call up another, a desired one, "because the two have been associated together in the history of the individual, or because a connection between the two has proved useful in the history of the race."¹⁸ Sometimes the appeal to the instinct of the voter is direct, as by the politician who cultivates a pleasant smile, a hearty manner, and a not too discriminating taste in

¹⁶ *Psychologie politique*, pp. 61-63. See also his *Psychology of the Great War*.

¹⁷ *Op. cit.*, p. 167.

¹⁸ *Ibid.*, p. 101.

babies. More often it is indirect, through the use of words bearing a symbolic value, such as liberty, justice, loyalty, country, party, and so on. For the mass of men do their so-called thinking in such terms, or "entities," which they seem to assume have always the same validity whatever the facts of the particular case being dealt with, and response to which is, therefore, quite automatic.¹⁹ Affection and interest, in other words, may be, and by the professional politician systematically are, "directed towards political entities which are very different from those facts in the world around us which we can discover by deliberate observation and analysis."²⁰ Furthermore, it is too much to hope—certainly this is the implication—that the thinking of men in the mass can ever be entirely purged of its inherited puerility. But well-intentioned men can be trained to beat the politician at his own game, while officialdom, with whom the future of society rests more and more, can be brought under the domination "of interest and variety, of public spirit and the craftsman's delight in his skill." Wallas's Utopia is a time when what we today call politics shall have been superseded by a professional public service with professional ideals and scientific methods.²¹

The importance of this book in supplying political science with a new outlook would be hard to over-estimate, and the appreciation of its contribution is apt to increase rather than diminish for some years to come. Time may be when *Human Nature in Politics* will be grouped with *The Prince* for its union of realistic outlook with a constructive intention. It is none the less necessary to recognize that the work has one important deficiency. Placing the reliance he did on "instincts" as the product of an assumed struggle for existence, Wallas was led into a two-fold error. In the first place, while dismissing with deserved opprobrium the intellectualist eighteenth-century version of the political animal, he under-estimated the plasticity of the human mental constitution; and he consequently, in the second place, permitted himself to be diverted from the most interesting single problem suggested by his book, namely,

¹⁹ *Ibid.*, p. 84.

²⁰ *Ibid.*, p. 98.

²¹ *Ibid.*, p. 268.

that of the source of the "political entities" of which he makes so much. These he apparently regards as relatively fixed data,²² if indeed they are not inherited along with the instincts of which they are categories or antennae, so to speak. We of today, however, with the lessons of the Great War and its propaganda, to say nothing of modern advertising, whereby the steady purchase of listerine has been rendered a social duty taking precedence even over forbearance from homicide, know better.

Nor are these the only developments that stand between us—I am thinking particularly of the United States—and the publication of *Human Nature in Politics*. Since then the regimentation of labor in the service of great industry has proceeded apace; since then the model of popular education has been nationalized as never before; since then the automobile has put everybody on the highways on Sunday ("all the automobiles in the United States, placed end to end, make a Sunday afternoon"); since then radio has come to aspire to an almost nightly "hook-up" of thirty million listeners in; since then Andy Gump and Barney Googles have become national figures. Subjected to this uniform, protracted, million-atmosphere pressure, the human mentality simply must take shape from it; wherefore the primary interest of the political scientist of today is significantly different from that of Graham Wallas. His interest was in the methods whereby the professional politician succeeded in eliciting the desired responses from certain fixed instincts; ours is in the method by which the professional politician and his imitators proceed in the first place to plant in the minds of people the responses which they know they shall want subsequently to elicit. And we are also interested in the political possibilities of a popular mentality resembling nothing so much as a conjuror's hat. We are thus brought face to face with behaviorism.

IV. THE GOSPEL OF BEHAVIORISM

For our purposes, no passage in the entire range of behavioristic literature can possibly be more intriguing than the following from Dr. John Watson's volume entitled *Behaviorism*: "In 1912

²² *Op. cit.*, p. 61.

the behaviorists reached the conclusion that they could no longer be content to work with intangibles and unapproachables. They decided to give up psychology or else make it a natural science. They saw their brother scientists making progress in medicine, in chemistry, in physics. Every new discovery in those fields was of prime importance; every new element isolated in one laboratory could be isolated in some other laboratory; each new element was immediately taken up in the warp and woof of science as a whole. May I call your attention to the wireless, to radium, to insulin, to thyroxin, and hundreds of others? Elements so isolated and methods so formulated immediately began to function in human achievement.

"In his efforts to get uniformity in subject-matter and in methods the behaviorist began his own formulation of the problem of psychology by sweeping aside all medieval conceptions. He dropped from his scientific vocabulary all subjective terms, such as sensation, perception, image, desire, purpose, and even thinking and emotion as they were subjectively defined.

"The behaviorist asks: Why don't we make what we can *observe* the real field of psychology? Let us limit ourselves to things that can be observed, and formulate laws concerning only those things. Well, we can observe *behavior*—*what an organism does or says*. And let me make this fundamental point at once, that *saying* is doing, that is, *behaving*. Speaking overtly or to ourselves (thinking) [Here the benign doctor seems to be trying to "slip one over;" but see below] is just as objective a type of behavior as base-ball."²³ The writer of these words is today the psychological expert of a large advertising concern, and is said to draw a salary of fifty thousand dollars a year. Can there be any question that this new method has enabled psychologists "to function in human achievement;" and if psychology, why not political science?

The central concept of behaviorism is the *response*, that is, the reaction of the human organism to external stimulus. Some responses, like breathing, are automatic and unconditional, but "conditional" responses are much more numerous, and the basis,

²³ *Op. cit.*, p. 6.

or rather the content, of the individual's mental life. The behaviorist seems to admit—Watson, at least, does—that human beings have an innate capacity for fear, rage, and love, although the matrix of each of these emotions is, of course, held to be purely biological. Provided with this simple behavior pattern, the responses of infants to a given stimulus are fairly uniform, and soon become habitual. Thus man is a creature of education, and “personality” is only the sum of the habits foisted on him by his education. But suppose a man's habits fail to bring him happiness? In that case he should be provided with a new set of habits, which can be done by furnishing him with a new education, i.e. a new environment, a new set of stimuli. Yet while continuously plastic, the human mental (or nervous) constitution is most plastic in early childhood. Indeed, when it comes to the question of child training, Dr. Watson far outbids the Jesuits. They wanted a child for his first six years; Dr. Watson promises to head him for the scaffold or the throne within his first six months. What Dr. Johnson said of the Scot, Dr. Watson holds applicable to the human individual wherever found—“much may be made of him if you catch him early enough.”²⁴

Some other concepts of behaviorism according to the gospel of Watson may be dismissed more briefly. Memory—the term itself is taboo—is a dormant habit capable of reasserting itself when presented with the proper stimulus. Dr. Watson himself proved this to be so by experimenting with rats. Mind and consciousness are, on the same authority, “passing concepts;” language a collection of verbal objects; and thinking only talking to one's self, a process in which “your whole body is as busy as though you were cracking rocks, although your laryngeal mechanisms are setting the pace. . . . are dominant.”²⁵

A question obtrudes itself: thinking is a kind of muscular response—let it be granted—but response to what sort of

²⁴ See *Behaviorism*, chap. 5. The behaviorist position, though anti-intellectualist, is extremely egalitarian. It is a revival of Helvetius's contention that “intelligence, genius, and virtue are the products of education,” and that differences of intelligence spring solely from this source. See Aldous Huxley, *Proper Studies*, p. 11.

²⁵ *Behaviorism*, p. 197.

stimulus? For, no stimulus, no response. Dealing with this question at one point, Dr. Watson says that he gave a certain lecture because he was offered fifty dollars to do so. The answer seems inadequate. It may explain why Dr. Watson gave a lecture, but not that *particular* lecture—which may not have been worth fifty dollars. Elsewhere Dr. Watson returns to the same question in these words: "How do we ever get new verbal creations such as a poem or a brilliant essay? The answer is that we get them by manipulating words, shifting them about until a new pattern is hit upon."²⁶ That is to say, creative thinking is a game of anagrams. Nevertheless, the question still remains as to any particular poem or essay—why, that particular "new pattern" having been "hit upon," thinking thereupon ceased. Dr. Watson's apparent answer is that the mere satisfaction of achieving a *new* pattern—the "equivalent" he says "of getting food"—brought stimulation to an end; in other words, there was adjustment to the stimulating environment. So, in addition to fear, rage, and love, man would seem also to have an instinct which is satisfied only by achievement of novelty.

But such speculations are, after all, somewhat afield from our purpose. Our interest in behaviorism, apart from the confirmation which it lends to the thesis of the essential irrationality of popular political thought and action, is twofold; first, for the hope which, as earlier mentioned, it has stirred in certain bosoms of converting political science into a real science; secondly, for the rôle which it indicates for education in a democracy. Let us consider these matters in turn.

V. THE "IS" VERSUS THE "OUGHT-TO-BE"

Taking the position that "government itself is behavior," one distinguished political scientist contends that it becomes "possible for political scientists to cease considering their field as one of formal description and legalistic philosophy, and to regard it as a *natural science*; and furthermore, when so regarded, political science and behavioristic psychology become one and the same

²⁶ *Behaviorism*, p. 198.

thing. There will, of course, be a difference of opinion as to whether the political scientist should accept a complete merging of his field with that of the psychologist. Many believe, and perhaps justly, in the existence of political facts *per se*, and in an order of reality cast in terms of social and political structures. Perhaps they are right Some persons, however, will desire to discard the structural view as descriptively possible but as barren of promise for scientific understanding and control. These persons will see in the relation between political science and psychology not an overlapping but an identity."²⁷

It would be gratuitous to comment on this passage from the point of view of one who, without the advantages of training in a psychological laboratory, has to make his daily living by teaching political science—so-called. Let me say, nevertheless, that even the psychologically trained political scientist should not be too complacent about his prospects. For in a later article this same writer gives us reason to think that possibly behaviorism is no better than it ought to be when regarded as a real science. Let me quote again: "He [the behavioristic psychologist] *begins*²⁸ to interpret behavior through the generalizations which can be given him by the neurologist and the general physiologist. The physiologist, in his turn, describes the action of nerve and muscle fibres and then analyzes the cells of which they are composed, either actually or conceptually (*sic*), into their organic, and finally into their inorganic, components. By the aid of generalizations in the fields of organic chemistry and physics, the nerve impulse and muscle contractions are interpreted in the simpler and more universal terms of chemical dissociation, electrical polarization, and the like. The physical chemist, in his turn, peers into such phenomena as electromagnetism and 'ether conduction,' seeking to identify a still more elementary plane upon which even broader generalizations can be discovered."²⁹ Is it not apparent that political science

²⁷ F. H. Allport, in Ogburn and Goldenweiser, *The Social Sciences and Their Interrelations*, p. 277.

²⁸ The present writer's italics.

²⁹ *Publications of the American Sociological Society*, vol. 22, p. 85.

will not be a *real* science until the relation between it and chemistry has become "not an overlapping but an identity?" This consummation doubtless waits upon further knowledge regarding the nature and the function of the endocrine glands.

Meantime, the great obstacle in the way of making political science a natural science lies, of course, in the difficulty attending experimentation in this field; and that is three-fold. Scientific experimentation is describable with fair accuracy as the planning of a series of situations of which the recognizable factors will all remain constant except one, the importance of which will then be registered in the result. But while the chemist can plan an indefinite number of situations, the political scientist must usually wait for his situations to develop of themselves, and, what is more, when they do develop it is almost never in consequence of the alteration of a single factor, but rather of a multiplicity of factors. Lastly, and worst of all, whereas the natural scientist, being in a position to measure and control all the factors of a given situation, can select for variation the one that he thinks is of greatest importance for work needing to be accomplished, the political scientist is only too happy if he can isolate any factor at all, and without regard to its promise for future accomplishment.

Let us consider in this connection the achievement to date of "the new political science." For the most part, it comprises statistical studies in what one of its exponents terms "political behavioristic psychology"—in other words, of group or individual attitudes having political implications, with an effort to determine the factors of these. It would be quite impossible to exaggerate the impression left by the studies of this nature which the writer has seen, as to the competence of their authors; but as to the results obtained, the expression of enthusiasm may reasonably be more restrained. There was always an immense unlimbering of apparatus, an immense polishing of a technique already spotless; but it was all apparently for the sake of the game itself. The problems set were of no great evident moment, and the solutions provided either were inconclusive or merely substantiated what must have been the off-hand verdict of any

rather intelligent and well-read observer. Nor is this to say that profitable experimentation is out of the question in the field of governmental activity—that is, experimentation of a sort. The student of municipal government is especially fortunate in this respect, for every municipality is a potential laboratory. Still, the question remains, What should be the objective of such experimentation? Should it be a compiling of statistics and a plotting of curves explanatory of why La Follette was not elected president, or to prove that most people are prone to classify a heavily bewhiskered person as a bolshevist rather than a banker; or should it be the ascertainment of the value, from the point of view of widely agreed tests of public welfare, of suggested governmental programs and expedients?

What, let it be asked therefore, is the outstanding lesson of political behaviorism—a lesson supplemented by that of war propaganda, of modern advertising methods, of the thing called vogue, and in a dozen other ways? Is it not the lesson of the indefinite educability, and even re-educability, of the masses? Is it not the lesson that if those who are best qualified by good will, lack of bias, trained minds, and precise methods to do this work as it should be done, and for proper ends, do not do it, others will—indeed are doing it at this moment—and for selfish ends?³⁰ Is it not, in short, that the real rulers of the race are those who educate it—who, in the words of Mr. Lippmann, “create consent”?³¹

Consider the matter of vogue alone, and its dictators. Says Mr. Wyndham Lewis in his too little appreciated volume, *The Art of Being Ruled*: “Were these rulers world rulers . . . they would have the power to impose any orthodoxy they chose from China to Peru. They would be able to make a matron in Yokohama and Dublin simultaneously appear in a dress of lotus leaves, a vest of mail, a ballet-dancer’s skirt, or a crinoline; to shave her head or dangle her hair in a plait; to see that she had seven lovers or to see that she confined herself to her husband . . . that . . . she was a confirmed vegetarian one

³⁰ *Par example*, the “Power Trust.”

³¹ *Public Opinion*, p. 248.

week, and a hearty beef-eater the next And she would be quite happy. All these things in any case can be observed around us in an imperfect, primitive form today".³² There may be a slight strain of exaggeration about this, but the moral which Mr. Lewis deduces from it loses none of its manifest cogency on that account.

Again quoting from the same volume: "The harsh and ominous words, *ruler* and *ruled*, although they must be used, are in practice infinitely tempered to the shorn lamb in our educationalist era. Education plays, and will continue to play, a much more important part than physical and exterior force. Force is a passing and precarious thing; whereas to get inside a person's mind and change his very personality is an effective way of reducing him and making him yours. Merely to chain him up like a dog or a slave is the act of an unimaginative tyrant. To kill him is equally meaningless. It is by taking him when he is young and educating him that you can secure him to yourself. The physical part of power, like the bloody part of revolution, should not be insisted upon."³³

Again a trifle of exaggeration possibly. Even so, is political science to be deterred by a touch of hyperbole from accepting an invitation to ascend the seats of the mighty? We have already seen the alternative that solicits; but, to be perfectly fair, let it be re-stated in the words of an exponent: "Social scientists have frequently attempted the impossible task of eating their cake and keeping it too. They have sought to retain scientific status for themselves and their subjects at the same time that they have sought to become arbiters of social goals and values."³⁴ The answer is, Why should the political scientist spend his time measuring stereotypes planted in the public mind by other people when he could be planting some of his own? The issue, indeed, is not whether the political scientist can have his cake and eat it too, but whether he shall trade his cake for a mess of pottage. And why should society be barred

³² *Op. cit.*, p. 44.

³³ *Ibid.*, p. 98. See also p. 112.

³⁴ Stuart Rice, *Quantitative Methods in Political Science*, p. 157.

from having a few arbiters of social values who know what scholarly method is, as well as so many of the other sort? There is certainly nothing about being an arbiter that inhibits one's using scientific, statistical, or any other device of intellectual precision.

That the primary task of political science is today one of popular education, and that therefore it must still retain its character as a "normative," a "telic," science, is, then, my thesis. Why, indeed, should there be another natural science anyway? The general obtuseness of the laboratory sciences to social values is boasted by their would-be imitators, and is as notorious as it is infantile. With modern physics and chemistry brandishing sticks of dynamite with the insouciance of a four-year old, what could be more preposterous than to induct political science into the same nursery of urchins?

One objection remains to be disposed of, namely, the suggestion that possibly the people will not want to accept the guidance which political science has to proffer. The objection should not be taken too seriously; with the success of contemporary biologists and psychologists before him in persuading the public that their pronouncements on any topic whatever are scientific, the political scientist should not be downcast. As an acute foreign observer has recently remarked, Americans, in "their sanctimonious way, are always ready to accept a theory" if "they think it is scientific."³⁵ Perhaps, indeed, this is just where "the new political science" will come in handy; it may not make political science more scientific, but it will make it *appear* to be so. So, all in all, there is no reason why political science should not become again what Aristotle thought it to be, the most important of all sciences—the *basic science*; and this even though it must still leave the reading of the future to physics, chemistry, and astronomy, not to mention astrology, alchemy, and palmistry.

A closing reference to behaviorism: modern democratic theory begins with a psychological theory, and it ends with one, and superficially they are one and the same theory; actually

³⁵ A. Siegfried, *America Comes of Age*, p. 114.

the *tabula rasa* of the late John Locke and that of the extant John Watson are two very different things. The former is a photographic film which builds up its picture by a process of absorption; the other is an enticing white wall inviting human impudence to do its worst. Yet is there any reason why effrontery and self-interest alone should wield the pencil? And is there any reason why good will, scientific method, and intellectual independence should not? The real destiny of political science is to do more expertly and more precisely what it has always done; its task is criticism and education regarding the true ends of the state and how best they may be achieved. So far as it contributes to this end, the more of scientific method the better.

SOCIAL ORDER AND POLITICAL AUTHORITY¹

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IV. GROUP-PROCESSES AND AUTHORITATIVE LEADERSHIP

The first of these papers carried a warning against conceiving social order in an absolute sense. It does not mean suppression of all forms of competition and defeat, but only the protection of selected human interests at the expense of others. Even taking order in this limited sense, it was found that custom and voluntary adjustment furnish an incomplete apparatus for its furtherance. The effectiveness of custom was seen to be connected with the auxiliary activity of an organ of leadership to serve as a focus for the radiation of custom, and a pivot for change.² Voluntary adjustment, while capable of resolving many interest-conflicts beyond the reach of custom, was also found to rely largely on the initiatory activity of an organ of mediation.³ Finally, we have thus far considered social order primarily from the point of view of the prevention or adjustment of direct conflicts of interests between individuals.

The functioning of a social group requires more than that its members should refrain from what other members resent as invasions of their interests. If the advantages of group life are to be reaped, it is necessary that at many points the group should, as we say, act as a unit, which means that each member should so shape his conduct with reference to the conduct of others that the acts of all, when thus geared together, will produce an aggregate or group result. This gearing together of the acts of separate individuals is what is commonly called "coöperation." Coöperation has value only as it furthers interests which belong to individuals. Therefore, as was pointed

¹ The first installment of this article appeared in this *Review*, vol. 23, p. 293 ff. (May, 1929).

² *Ibid.*, pp. 311-313.

³ *Ibid.*, pp. 321-322.

out, refusal by one individual to do his part in an established coöperative process may appear in the guise of an invasion of the interests of those who expect to share in the results of the process.⁴ But coöperation requires more than readiness to participate. Even when this is assured, so that no interest-conflict arises between individuals, the success of the process requires that the parts be assigned, properly timed with reference to one another, and touched off into action at the critical moment.

We here confront a different social problem from the adjustment of direct interest-conflicts—a problem which may be stated as the need of group organization for group effectiveness. This need is usually met in part by custom functioning without conscious design, as where custom drills different individuals to perform at the proper time and in proper sequence different acts which dovetail into the patterns of co-operation peculiar to the group.⁵ Under such circumstances there may be no need for central initiative or direction in the process. When, however, changes occur in the environment within which the process goes on, or for some other reason it becomes necessary to rearrange or alter the parts and their allotment, this can ordinarily be done only by central planning.⁶ Such planning involves the adjustment of individual interests secondarily rather than immediately. Its immediate and major objective is to maintain or increase the effectiveness of the group process as a unit for attaining the aggregate result expected of it,⁷ e.g., subsistence or defense. For this task the primary

⁴ This *Review*, vol. 23, p. 297.

⁵ B. Malinowski, *Argonauts of the Western Pacific*, pp. 8, 116, 157, 160; "Economic Aspects of the Intichiuma Ceremonies," in *Festschrift Westermarck* (1912); H. Powdermaker, "Leadership in Central and Southern Australia," *Economica* (June, 1928), p. 177.

⁶ Professor A. M. Tozzer has emphasized the importance of the "crisis" as a factor in developing leadership. *Social Origins and Continuities* (1925), pp. 53, 213.

⁷ This emphasis, which displays itself in the executive and legislative activity of a government, is reversed in its purely judicial activity. See Freund, *Standards of American Legislation*, ch. ii, and my *Administrative Justice and the Supremacy of Law* (1927), pp. 23-31.

requisite is a survey of the needs and resources of the group. In modern democratic cultures, countless volunteers offer themselves for this task, and the programs put forward are legion; but since only one alternative can be ultimately adopted, there is need in complex no less than simple groups for a responsible source to which the group may look for definitive initiation of any program of readjustment, i.e., for initiative which they can follow in the assurance that it will be followed by the other members likewise.

Even where custom has automatically set the plan and assigned the parts in a coöperative process, it cannot ordinarily specify the act or event which is to start the process going. Whenever action is to be taken in a pattern or sequence by any considerable number of individuals, the process, even when the pattern is fixed, needs to be set off or initiated. There must be someone, as we say, to "take the lead," i.e., to make an initial decision which others will follow.⁸ In warfare, for example, the place and function of every individual in the process after it has been initiated, the order of march, the plan of campaign, and the like, may all be prescribed by custom with machine-like precision. A decision to go to war cannot, however, eventuate automatically, because every such decision must respond to unique factors peculiar to each special emergency. Such a decision is therefore necessarily the result of initiative taken by some element within the group, even though the impulse thus given may at once run so freely through the other members that their resulting action will have the appearance of mass-spontaneity. So if the group is to assemble to perform a religious ceremony or consider matters of common interest, someone must call them together. Throughout the life of a group there

⁸ This is true even of animals. The tendency of sheep to follow a bell-wether is well known. See also Darwin, *Descent of Man* (N. Y., 1903), p. 105. "What is the beginning of the migrations and construction-work of ant-hills? Is it by a common impulse, instinctive, spontaneous, springing from all the associates contemporaneously under the pressure of external circumstances submitted to at the same time by all? No,—an individual detaches itself, begins to work by itself. . . . Imitation-contagion does the rest." Tarde, *Lois de l'imitation*, p. 4, quoting Espinas, *Sociétés Animales*.

is need for such decisions on behalf of, and for the benefit of, the whole, which can be initiated only by a single mind or small number of minds.⁹

Thus in the organization and functioning of coöperative processes no less than in the adjustment of interest-conflicts between individuals, an essential part is played by a focus or organ of leadership. Professor Myres has pointed out that *arché*, the generic Greek word for "government," means, in its etymological sense, leadership, or "initiative," of precisely this causal kind; it means "taking the lead in such a way that others will follow." So *imperium*, the Roman word for "governmental power," means setting the stage for something to happen, taking the initial step in a process.¹⁰ There is no reason to suppose that government in this sense of authoritative leadership, i.e., leadership which others can be counted on to follow, has not always formed as central an ingredient in the apparatus of social order as custom and the voluntary adjustment of interests.

The number of matters concerning which the function of authoritative initiation is concentrated in a special organ is far smaller in primitive than in advanced societies. The decisions which initiate and give direction to the movements of a primitive group proceed largely from informal centers.¹¹ Where the need exists for an initiating decision, it is often impossible to predict from what source it will come. The act of leadership which will give direction to a group-process is simply the one which happens to come under such circumstances that the members of the group spontaneously follow it. In this connection, it must be noted that all human groups of any considerable size are composed of smaller groups, of which the simplest is the natural family. In this ultimate group the principle of a fixed center of leadership seems to have been most definitely

⁹ "It is the individual who initiates, who invents, new ways of action." Tozzer, *op. cit.*, p. 53.

¹⁰ J. L. Myres, *The Political Ideas of the Greeks* (N. Y., 1927), pp. 139-150.

¹¹ Howitt gives instances of such informal leadership. See *Native Tribes of Southeastern Australia*, pp. 301, 303, 304, 316, 319, 320.

established from the outset.¹² The primitive family usually acts as a unit, and many of the discretionary decisions which have to be made within the gaps of custom are accordingly decisions on behalf of the family group and not on behalf of individuals. The result is that within the family there is always a tendency to develop an organ of authoritative initiation and decision, which naturally tends to be the father, or where several related families live together, the oldest male.¹³

At the lowest levels of social organization, the organ for making decisions on behalf of the composite or tribal group is likely to consist of a mere gathering or council of the leaders of the smaller groups.¹⁴ Each of these, within his own group, makes authoritative decisions on a wider range of questions than the council decides for the whole tribe. Within the small group, where the sense of personal individuality distinct from the group is only slightly developed,¹⁵ the headman is often allowed by the members to make decisions directly affecting the interests of individuals, for instance in connection with the management of family property¹⁶ and the selection of mates.¹⁷ On the other hand, the function of the tribal council

¹² At the lowest levels of culture, as among the Yahgan of Tierra del Fuego, the small family groups dwell separately without any organized connection with a larger community. "The only fixed authority recognized is that of a father over his family." Hartland, *Primitive Law*, pp. 11-12, quoting *Bulletin of Bureau of Ethnology*, lxiii, pp. 168 ff. Such independent family groups are found among more advanced nomadic peoples, e.g. the early Semites, and have often led to a high development of the principle of paternal authority.

¹³ On authority within the smaller group, see Hobhouse, *Morals in Evolution*, pp. 48, 79-81, 102-104, citing numerous references for specific peoples. When the smaller units were combined into larger groups, the process was often aided by the fiction of common blood-relationship. E. Meyer, *Histoire de l'Antiquité*, iii, 63-64. For the present discussion, the special problems raised by "matrilineal" societies are not important.

¹⁴ Lowie, *Primitive Society*, pp. 360-361; Malinowski, *Argonauts of the Western Pacific*, pp. 37-41.

¹⁵ Ford, *Natural History of the State*, pp. 92-102, and authorities there cited, especially E. J. Payne, *History of the New World called America*, ii, pp. 199-202; W. K. Clifford, *Lectures and Essays* (2d ed., London, 1886), p. 291.

¹⁶ Hobhouse, *op cit.*, pp. 326-330; Hartland, *Primitive Law*, pp. 97-103.

¹⁷ Howitt, *op. cit.*, pp. 298, 301, 313, 321.

is generally limited to fixing the date of tribal gatherings, deciding on war and peace, moving the location of the camp, and permitting or refusing to permit the reception of strangers.¹⁸ The mere size of such a council tends to concentrate authority in a tribal headman, or chief, whose position at the beginning is more often informal than truly official.¹⁹ The powers which it carries with it depend largely on the personality and prestige of the individual who happens to hold the post at any given time.²⁰ As religious conceptions advance beyond the simplest magic, those tribes seem to have achieved the most effective coöperation in peace and war which have personified the unity of their group life in a tribal deity, regarded as the spiritual embodiment of the group and director of the group activities.²¹ Such a belief seeks visible expression for the group-unity in a single earthly spokesman and representative of the tribal god. Thus results the phenomenon of the "priest-king," which occurs at the upper levels of barbarism all over the world,²² and the influence of which has survived in civilized countries until

¹⁸ Howitt, *op. cit.*, pp. 323-325, 394, 662; Lowie, *op. cit.*, p. 361.

¹⁹ For the concentration of authority in the hands of a tribal chief, due to the emergence of a strong personality, see account of the career of Jalina-piramurana among the Dieri. Lowie, *Primitive Society*, pp. 359-360. Such a position may easily become hereditary. Howitt, *op. cit.*, pp. 304, 305-306, 308, 310, 313, 316, 318.

²⁰ The qualifications resulting in leadership are various—age, reputation for skill in magic, military prowess, descent from a particular family. Instances of all these, and of various combinations of them, are found among the Australians. *Ibid.*, pp. 297, 304, 315, 316 (age); pp. 301-303, 313 (magic); pp. 302, 303, 314, 316 (prowess in war); pp. 301, 302, 308, 317 (combined qualifications). See Powdermaker, *op. cit.*, *supra* note 5. Among other peoples, wealth is a qualification. Lowie, *op. cit.*, pp. 227, 367. For the whole problem of the emergence and organization of leadership, see Lowie, *The Origin of the State* (N. Y., 1927); A. A. Goldenweiser, "Anthropological Theories of Political Origins," in *Political Theories, Recent Times*, ed. Merriam and Barnes (N. Y., 1924).

²¹ E. Meyer, *op. cit.*, vol. i, 144 ff.; iii, 73-85; Durkheim, *Elementary Forms of the Religious Life* (tr. Swain), pp. 205-230. For a discussion of the relation between war and the tightening up of group organization, see Lowie, *The Origin of the State*, pp. 6-19; E. Meyer, *op. cit.*, vol. iii, 68.

²² For instances of religious kingship, see Hocart, *Kingship*, pp. 7-15; for early India, U. N. Ghoshal, *Hindu Political Theories* (Oxford, 1927), *passim*; for the early Sumerians, E. Meyer, *op. cit.*, iii, pp. 151-152; for the Egyptians,

recent times.²³ Where the group leadership comes to be concentrated in a ruler of this character, the powers and authority which go with it expand enormously, and bring under his control many matters not previously regulated by decisions of the leader. The growth of the functions of government to the scope which they hold in advanced societies seems closely connected with this stage of political development.

In the most primitive societies, the community organ of leadership concerns itself very slightly with interest-conflicts between individuals or smaller component groups.²⁴ If an individual feels aggrieved by the act of another, his only course is to retaliate, i.e., to seek to injure the other in return.²⁵ From the beginning, whatever leadership exists within a group doubtless attempts to prevent such disputes from being carried so far as to endanger the maintenance of established processes of group coöperation.²⁶ These efforts meet a serious obstacle when the component kinship groups solidify beyond a certain point. "Through the bond of kindred, retaliation develops into a system"—the system which we call the "blood-feud."²⁷

ibid., ii, pp. 165-167, and Moret, *Caractère religieux de la royauté pharaonique*; for pre-Hellenic Crete, G. Glotz, *Aegean Civilization* (N. Y., 1925), pp. 147 ff.; for the Roman monarchy, Greenidge, *Roman Public Life*, pp. 51 ff. For combination of priestly functions with the chieftainship among the Maori, see Hartland, *Primitive Law*, p. 32; for other parts of Oceania, Rivers, *Social Organization*, pp. 162-163. It is Sir James Fraser's thesis that kingship developed from the function of the public magician, or medicine-man. He has collected an enormous amount of evidence in *The Golden Bough* (one vol. ed., N. Y., 1925), pp. 83-106. The importance of the supposed connection between kingly and divine power in securing obedience is illustrated by the attempts of monarchs like Alexander the Great and Augustus to consolidate a newly united empire by establishing the cult of emperor-worship. See E. R. Goodenough, "The Political Philosophy of Hellenistic Kingship," in *Yale Classical Studies*, vol. 1, pp. 55 ff.

²³ *E.g.*, in the form of the theory of the king as God's vicegerent, Bossuet, *La politique tirée de l'Écriture*, V, iv, 1; and the recent Japanese conception of the divine right of the Mikado, G. E. Ueyhara, *The Political Development of Japan* (London, 1910), pp. 19 ff.

²⁴ Rivers, *op. cit.*, p. 161; Hobhouse, *op. cit.*, p. 71.

²⁵ Howitt, *op. cit.*, p. 334.

²⁶ Hobhouse, *op. cit.*, pp. 93-95.

²⁷ *Ibid.*, p. 71; Marett, *Anthropology*, pp. 189-190.

There are peoples like the Ifugao who apparently do not find that a régime of blood-feud in their midst interferes with group-processes which they value.²⁸ Among other peoples, endless internal vendetta threatens to become a dissolving force which the group cannot tolerate if its processes are to survive. Accordingly, wherever a strong organ of authority develops, one of the tasks it almost always undertakes is to protect the group processes by bringing the blood-feud under control.

One of the earliest forms which this effort takes is to reduce the conflict to a single definitive combat between the parties, the issue of which shall be accepted by both as ending the dispute.²⁹ The success of such efforts is connected with religious ideas which in time transform the whole mental attitude toward the redress of grievances. Trial by combat is in origin merely an attempt by an aggrieved party to satisfy his claim by his own personal efforts. In a mental environment where all physical occurrences are attributed to the direct action of supernatural beings, it is, of course, supposed that the outcome of the combat depends on the will of a god or gods. The combat can thus be regarded as an appeal to divine power to decide which party has the better claim, i.e., the one regarded more favorably by the gods. Thus the blood-feud becomes transmuted in the form of trial by combat into an application to an authoritative and impartial tribunal to decide between conflicting claims.³⁰ This is even more clearly true when the method of trial resorted to is the ordeal.³¹ A new attitude emerges in this willingness not to insist on the satisfaction of interests, but to allow their validity to be tested by an impartial external agency, and to acquiesce in the result of the test, even though unfavorable^{31a}.

²⁸ See first installment of this article, *American Political Science Review*, vol. 23, pp. 324-325.

²⁹ Howitt, *op. cit.*, pp. 334 ff.

³⁰ Vinogradoff, *Historical Jurisprudence*, vol. i, p. 349.

³¹ Maitland, *Collected Papers*, vol. ii, 448; Taylor, *The Mediaeval Mind*, vol. i, 231-232.

^{31a} Dr. Goitein advances the interesting suggestion that this willingness is largely founded on what may be called the "aleatory" instinct—the willingness to "take a chance" and abide by the result. *Primitive Ordeal and Modern Law*, pp. 266-271.

Along with efforts to dissolve the blood-feud into methods of decision less disruptive of established group processes, efforts are generally made by the group leadership to convert the objective of the contenders into something less destructive than mere vengeance. These efforts usually take the form of inducing the aggrieved party to accept reparation.³² As authoritative leadership, or government, becomes stronger, one way in which its strength manifests itself is by exertions to make this substitution compulsory.³³ At this point the central organ of authority in the community visibly begins to exercise directive control over the behavior of individuals in matters connected with purely private interest-conflicts. It begins to tell them that they must do certain things, and not do other things. The number of these things is at first confined to the minimum essential to preserve what we speak of as the "public peace." The governing authority does not as yet tell one individual not to assault another; it does no more than tell the victim that he must not retaliate if the offender offers the *wer-geld*. At the same time, it informs the offender that if such an offer is not made, a government official will seize his property to an amount equivalent to the sum which should have been offered.³⁴ This means that government becomes, although as yet within narrow limits, an agency for defining the line between the sphere of action of one individual and interests belonging to others.

It is important to note that this interference of government with individual interests grows out of, and is directly connected with, its function of organizing and administering coöperative

³² Hobhouse, *op. cit.*, pp. 75 ff. The practice of offering and receiving composition tends to become customary, and a customary tariff of payments establishes itself. Vinogradoff, *Custom and Right*, p. 35. But such a custom, unlike other customs in that it is applicable only to a situation when a dispute has already occurred and blood is heated, is never as completely self-enforcing as customs of private every-day behavior (so-called "non-litigious" customs). It establishes an expectation without giving much assurance that the expectation will be satisfied. This is a characteristic of all customs which relate to the settlement of disputes until an authority is established to enforce them.

³³ Jenks, *Law and Politics in the Middle Ages*, pp. 102, 105-106.

³⁴ *Lex Salica*, 2; Boretius, I, 283.

group processes. The earliest activities of government, such as dictating the movements of the group, deciding questions of war and peace, and the like, involve the placing of direct restrictions on the conduct of individuals. When the group leadership, for example, determined that the group was to move in one direction rather than another, the effect was to require all the members to move in the direction decided on, and thus destroy the liberty of each to move in any other direction which he might personally have preferred. Similarly, when the group leadership decided to make war, the result was to impose on the group members the burdens of war-time existence, and to that extent require them to do certain things not otherwise necessary. The object of these interferences with individual freedom, which were sometimes enforced by summary punishment,³⁵ was simply to enable the group processes to continue to function. In the same way, it was the maintenance of the group, threatened with dissolution by internal feuds, that led the governing organ to interfere in the settlement of private interest-conflicts. The object was not to provide an agency better adapted than the feud to reach a "just" result between the parties, or one more satisfactory to them, but to restrain them from private efforts to reach adjustment which might disrupt processes of coöperation on which other members of the group depended.

This connection of the governmental function of deciding disputes with the function of maintaining group processes must be kept in mind if we would rightly understand the former

³⁵ From practically the outset of group life, something approximating to a public criminal jurisdiction is almost always exercised by the group leadership in punishing individuals whose conduct threatens to bring disaster on the group. A striking example is the so-called "buffalo-police" among the Plains Indians. Lowie, *Primitive Society*, p. 385. Offenses so punished were, however, almost always of a religious or sacral character, e.g., sorcery, divulging religious mysteries, etc. See Howitt, *op. cit.*, pp. 297, 332, 341-344; Hobhouse, *op. cit.*, pp. 88-92. "The evolution of criminal justice may be looked at as an extension of the conception of a tribal offense till it covers every serious wrong done to a single member of the tribe." *Ibid.*, p. 92. Professor Calhoun thinks that a true criminal jurisdiction did not emerge in Greece until the time of Solon. G. M. Calhoun, *Growth of Criminal Law in Ancient Greece* (Berkeley, 1927), ch. iv.

function in advanced societies. When government interferes in a private interest-conflict, it is ultimately because of the effect which such interference, or its absence, will have on interactions within the group belonging to some process of group effectiveness. If government concerned itself with a controversy between individuals without reference to the bearing of the controversy on interests of other members of the group, its interference would have a quality of unreality, in that there would be no practical standard for determining whether or not the interference ought to occur, and, if so, what should be its nature and direction.

Authoritative demarcation of conflicting interests by a human agency external to the parties represents a method of social control essentially different from, and yet complementary to, adjustment by custom on the one hand, and by voluntary act of the parties on the other. The special advantage of this type of control is its combination of flexibility with effectiveness. It supplies an agency ready to intervene when conflicts in any field of human relations threaten interests of group members besides those directly in conflict, and when voluntary adjustments between the parties have proved impossible or ineffective. The adjustments which such an organ can introduce are available to resolve novel kinds of conflicts without waiting on the slow and uncertain crystallization of customs. At the same time, a way is supplied for dealing with conflicts occasioned by the persistence of customs which have become obsolete, or by the emergence of inconsistent customs. These results are possible because adjustment by impartial decision, like voluntary adjustment, proceeds through conscious effort to solve situations as they arise. It proceeds to this task with greater assurance of success because the effort is applied by an agency external to the parties, and not by the parties themselves.

So long as an authoritative organ for the adjustment of differences is absent, the tendency of each party to a conflict to push his own claim to the limit often prevents inconsistent claims from being brought into stable equilibrium except by

the more or less complete victory of the claim which can exert the greatest pressure against its adversary. With the establishment of an authoritative agency of decision, interests and psychological factors are set up which tend to avert this result. The parties, in addition to the interests which keep them apart, are supplied with a permanent interest of great strength which they share in common, in the form of their common respect for the organ of authority and their resulting willingness to accept its decision. This organ is, in fact, regarded as speaking on behalf of the group in matters in which it is believed to be essential for the maintenance of group processes that there should be final pronouncement by a single voice. All the individual interests which attach to the continued functioning of the group processes accordingly focus in common willingness to obey this voice. In this common and permanent interest, individuals find a foothold of agreement usually strong enough to overcome the strength of conflicting interests. Perhaps no force in human history has worked more effectively toward lessening the sharpness of differences between man and man, and thus making orderly coöperation possible, than the willingness of men to lay their differences for final settlement at the feet of authority. As Mr. Balfour has put it, "Though it may savour of paradox, it is yet no exaggeration to say that if we would find the quality in which we most notably excel the brute creation, we should look for it not so much in our faculty of convincing and being convinced by the exercise of reasoning, as in our capacity for influencing and being influenced through the action of authority."³⁶

It is of the essence of authority, in the sense in which the word is here used, that its exercise should be vested in a definite organ. It is, of course, possible to speak in a figurative sense of "authority" as attaching to the operation of impersonal forces like tradition or public opinion. There is always, however, the possibility that contending individuals will hear the pro-

³⁶ *Foundations of Belief*, p. 243.

nouncements of such impersonal authorities differently. In order that the element of finality may be present, on which the conciliatory power of authority so largely depends, it must speak with a clear and certain voice which announces the same decision to both contestants. Furthermore, a large part of the effectiveness of authority is due to psychological motives of sentiment, loyalty, reverence, which are most likely to attach to a concrete visible person or institution. Individuals at a high level of intellectual development doubtless find it possible to center their loyalty on the abstraction of a country or cause, but men in general seem to conceive the degree of sentiment which is capable of overriding selfish interests only toward a person or object which appeals immediately to some of their senses—Pope or Kaiser or the *fasces* of the Roman licitor.

In addition to such centralization in an organ which can attach to itself the interests of individuals in the group processes, and personify those processes as an object of loyalty, authority depends for effectiveness on belief in its impartiality. Adjudication by an authoritative organ is accepted by both contestants because each regards the resulting decision as emanating from a source too high to be contaminated by the hateful interests of his adversary. It represents the application to the dispute of an external standard by which both parties are content to have the scope of their interests measured, and thus it inevitably raises the problem of supplying such a standard.



V. AUTHORITY AND LAW

From the standpoint of a mature political system, the danger of allowing an authoritative organ to delimit the area within which individuals shall be free to further their interests presents itself as the danger of "arbitrariness." For this reason it has become commonplace to insist that such an organ shall act according to settled rules, or, as we say, according to law. Law as a body of known public rules of decision throws across individual interests the barrier and the protection of legal rights and duties, and thus supplies a standard which gives confidence

in the impartiality of the adjudicating organ. The origin of this point of view can be traced in primitive institutions; but the primitive approach to the problem of finding such a standard was initially different. Primitive men have confidence in the "rightness" of their ruler's judgments because they believe those judgments divinely inspired.³⁷ Primitive man is a pragmatist—"right" is the thing which works, which produces the good things he desires. Divinity attests itself by its fruits.³⁸ The ruler who by success in war, in the chase, and in achieving prosperity for his people, gives evidence of his divine nature, thereby sets the seal of "rightness" on his decisions.³⁹ They are accepted in a spirit of hero-worship, and out of willingness to follow a successful leader, rather than because of their conformity to established rules.⁴⁰

³⁷ "In the earliest time 'right' appeared to be of divine origin." R. Hirtzel, *Themis, Diké und Verwandtes* (Leipzig, 1907). Primitive man was sure there was a right, but he did not always claim to know it—he was content to leave such knowledge to the gods.

³⁸ Primitive man's conception of divinity was broad enough to include much of what we mean by "personality," in the sense of personal effectiveness. This quality of getting results was regarded as an indwelling divine power, to which the name *orenda* was applied among the Iroquois, and *mana* among the Melanese. See Harrison, *Themis* (Cambridge, 1912), pp. 63–68. Professor Myres sees something of this notion of "drive" in the primitive conception of *arché*. *Op. cit.*, *supra* note 10, p. 158.

³⁹ The doctrine that calamities, plagues, famines, etc., are proof that the ruler is displeasing to the higher powers survived far down into medieval political thought. See my *Statesman's Book of John of Salisbury*, p. lxx. For the idea in ancient China, see K. C. Wu, *Ancient Chinese Political Theories* (Shanghai, 1928), p. 14; in India, Ghoshal, *op. cit.*, *supra* note 22, p. 140; in Greece, Homer's *Odyssey*, xix, 108.

⁴⁰ When the Homeric kings handed down their dooms, or "themistes," the latter "were not framed in accordance with any body of law. *Diké*, or rightness, guided the royal judge" (Halliday, *Growth of the City State*, p. 71) as he held the magic sceptre, while Themis, the "prudent counsel of the gods," pointed out to him the practical advantages and disadvantages of the alternatives before him. For Themis in this sense, see Hirtzel, *op. cit.*, *supra* note 37, pp. 4, 7–8, 9–11, 19; but see E. Weiss, *Griechisches Privatrecht* (Leipzig, 1923), i, 19. This conception is carried forward in later royalist thought in the theory of the king as "animate law" (Goodenough, *op. cit.*, *supra* note 22, pp. 65 ff.). Law is not so much a known rule as the king's will for justice.

From the beginning, however, there is a tendency in primitive thought which makes for the reduction of authoritative decisions to rules. The basis of early magic is belief that the action of the powers which govern the world is characterized by uniformity in the face of like situations.⁴¹ This belief, which is the embryo of the modern scientific conception of an orderly universe, underlies the devotion of primitive men to custom, and leads to the conviction that the same act must always be done in the same way if it is to be done "rightly." The view consequently emerges that the will of the gods with regard to the decision of a controversy must be the same as their will with reference to other controversies of like kind.⁴² The primary function of the adjudicating organ, when called on to decide a conflict of interests, is, therefore, to repeat the decision reached in a previous conflict of the same character. In this way there is introduced into the process of adjudication the all-important doctrine of precedent, which, more than any other cause, has made possible the growth of law in societies which have adhered to it, while its failure to develop among other peoples largely accounts for their inability to resist arbitrary power. Law, in the sense of rules which require the same decision to be reached in cases of like kind, results automatically and unconsciously from the application of precedents.⁴³ The governing organ thus comes to be imprisoned within the channels of its own customs;

⁴¹ Frazer, *Golden Bough* (one vol. ed.), p. 49; E. Meyer, *Histoire de l'Antiquité*, vol. i, p. 142 ff.

⁴² That the will of the gods was subject to a higher necessity was a commonplace in the Greek conception of *Moira*, or fate. E. Burle, *Notion de Droit Naturel dans l'Antiquité Grecque* (Trevoux, 1908), 28-31. It was an easy step from this notion to the conception of a body of "natural" law consisting of rules that could not be changed even by the gods themselves, *i.e.*, an order of nature to which all rules of decision must conform. See Myres, *op. cit.*, lecture v; Weiss, *op. cit.*, i, 68 ff.

⁴³ All primitive law rests on precedents, although this is not always recognized, because they are not written. Maine, *Ancient Law*, pp. 11-13. "The primitive view regards law, not as something which lays obligations on individuals, but as a limitation on the otherwise free discretion of the judge." Weiss, *op. cit.*, i, 30.

its behavior, like primitive behavior generally, falls into a customary pattern.

The existence of settled customs of decision makes it possible to foresee the adjustment which the governing organ will effect for a particular interest-conflict, and thus influences in advance the conduct of the parties. If a man realizes that, in pressing his interests beyond a certain point in opposition to the interests of another, he will not be sustained, but will be subjected to some disadvantage, by the adjudicating organ, this knowledge is likely to operate as a deterrent to his going as far as he might otherwise have gone. The existence of the rule thus serves to mould the conduct of individuals to the interests of others, with the result that rules of decision tend to set up customs of private behavior. They become facts in the environment to which, like other facts, customs tend to adapt themselves.

(On no subject has there been greater confusion than on the relation between law and custom.⁴⁴ Both are uniformities. The essence of both is the assurance of like responses to like situations. The outstanding difference is that law refers primarily to like acts of decision by an adjudicating organ, while custom refers to acts of private conduct not specifically contemplating judicial determination.) To bring out this distinction, custom in the latter, or usual, sense of the word, is sometimes designated as "non-litigious" custom.⁴⁵ Confusion arises, however, from the effect, just noted, which law may have on custom in the non-litigious sense, i. e., from the tendency of settled rules of decision to promote customs of private behavior. This influence of authority on the formation of non-litigious customs raises the broader question of the relation of law to customs of this character which it finds already established. Does law conform to, and operate to "enforce," them, by supplying additional motives for their observance? Can it be said that the uniformi-

⁴⁴ See my articles, "The Law Behind Law," *Columbia Law Review* (February and March, 1929), xxix, 113, at pp. 125-141.

⁴⁵ Vinogradoff, *Historical Jurisprudence*, vol. i, p. 168.

ties of judicial decision are somehow derivatives from, and copies of, these existing uniformities of non-litigious conduct?

The earliest rules of judicial decision relate, not to the conduct of the parties which creates the interest-conflicts in dispute, but rather to the procedure of adjudication.⁴⁶ It seems clear that procedural rules cannot simply have been borrowed from the customary behavior of individuals. While many such rules may have been imitated from practices of voluntary mediation and arbitration which preceded authoritative adjudication,⁴⁷ other rules must have been invented to compass the special purposes of the new method of adjustment. On the other hand, in the case of rules defining substantive rights and wrongs, it is usual to assume that these must have been borrowed from non-litigious customs.⁴⁸ It is doubtless true that among the reasons leading a court to approve the conduct of one of the parties to a dispute may be the fact that such conduct is customary.⁴⁹ The object of adjudication being, in the last analysis, to maintain group processes, and these processes being largely embedded in existing group customs, it is likely that if one party has done what the court regards as customary, the interest of an adversary which has been violated by such conduct will not be granted protection. In such a case it seems natural to say that custom, in the sense of the daily practice of the community, is the rule of decision applied by the court.⁵⁰ Thus to identify non-litigious customs with legal rules is, however, apt to blur the distinction between the operation of custom as an independent agency of social control and the altogether different method of control through authoritative decision. It seems to

⁴⁶ Vinogradoff, *Historical Jurisprudence*, vol. i, p. 353.

⁴⁷ I.e., the "litigious customs" referred to above, note 32.

⁴⁸ E. Jung, *Das Problem des Natürlichen Rechts* (Leipzig, 1912), p. 155, citing Ehrlich, *Tatsachen des Gewohnheitsrechts*; Kühlenbeck, *Natürliche Grundlagen des Rechts und der Politik*, p. 170.

⁴⁹ Cardozo, *The Paradoxes of Legal Science* (N. Y., 1928), p. 15; Salmond, *Jurisprudence* (7th ed., 1924), p. 208; Lefroy, "Basis of Case Law," *Law Quarterly Rev.*, vol. 22, p. 303. For an illustration, see Vinogradoff, *Custom and Right*, p. 35.

⁵⁰ Vinogradoff, *Historical Jurisprudence*, vol. i., p. 368.

imply, as the only difference between the two, that when custom operates in the form of rules of decision, an added sanction is put behind it in the form of the enforcing power of government. The processes of adjudication and government are thus represented as merely auxiliary to custom.)

Such a view minimizes the contributions to order made by social control through governmental action. Government has established and strengthened itself as a method of control largely to supplement certain defects of control by custom. The function of government in merely enforcing the observance of non-litigious custom is, at best, relatively secondary, in either primitive or advanced communities. When a field of conduct is canalized by custom, there is not usually much need for resort to other agencies. Occasionally an individual may be rash or adventurous enough to deviate from a settled custom, and in such instances public disapproval may demand to be reinforced by the disciplinary action of government.⁵¹ The chief need, however, for other agencies than custom arises where there is a gap in the network of custom, or where custom is breaking down. Many of the disputes which have to be dealt with by the governing organ are precisely those which arise out of conduct not canalized by custom. Had they been covered by custom, there would normally have been no dispute. Obviously it cannot be said that the rules applied to reach decisions in such cases are borrowed from custom, since it is the absence of custom which creates the need for adjudication. This is true also where a custom has broken down, or is beginning to break down, under the pressure of new interests, or where inconsistent customs have grown up independently of one another and come into conflict. What the court must do in such instances is to determine whether or not it will approve conduct conform-

⁵¹ This was true, for example, of breaches of marriage customs, which, because they were supposed to bring on the community the wrath of the gods, were among many peoples subject to the early criminal jurisdiction discussed in note 35 *supra*, and in the passages in Howitt and Hobhouse there cited. So of the litigious customs referred to in note 32.

ing to custom⁵²—in other words, pass on the validity or invalidity of customs.⁵³

The possibility of such direct control over customs by a central organ is a major advantage of the system of authoritative control. One of the defects of control through custom is its inflexibility, resulting in the persistence of old customs after the special situations to which they were adaptations have passed away. Such customs prevent the emergence of new interests and technology better conforming to new needs of the community; or, if these make their appearance, friction and frustration result from their incompatibility with customs surviving from the old order. One of the valuable features of governmental control is its ability to coöperate with forces of change and development which meet obstacles in the form of established customs.⁵⁴ Government often serves as a liberating agency through which such forces can exert a concentrated power to clear a way for themselves through the network of established order.⁵⁵ Perhaps the most conspicuous instance of such a power exercised by government over custom was its suppression of the blood-feud.

Ordinarily, government cannot hope with success to attack directly any of the more firmly rooted customs of the community. Its effectiveness depends on the willingness of members of the community to accept the standards which it applies. If these happen to be in open opposition to modes of behavior ingrained by custom, the customary rules can generally enlist

⁵² For the difference between a rule of custom and a legal rule of decision, even when the latter accepts the former, see H. Goitein, *Primitive Ordeal and Modern Law* (London, 1923), pp. 210-213.

⁵³ See such cases as *Y. B. 12-13 Ed. III* (Rolls Series 236); *Freary v. Cooke*, 14 Mass. 488; *Metcalf v. Wild*, 14 Gray (Mass., 1859) 210; *Sieger v. Slingerland*, 2 Caines (N. Y., 1804) 219; *Hollis v. Wells* (Pa., 1845) 3 Clark 169; 5 *Pa. Law J.* 30.

⁵⁴ "The history of law is in effect the history of the critical moments in the changing of custom, and rules of law may be looked on as the accumulating deposit of the social solvents of custom." Goitein, *op. cit.*, p. 214.

⁵⁵ For the enormous importance of this task, see Frazer, *Golden Bough* (one vol. ed.), pp. 47-48.

in their support psychological factors more powerful than those which make for obedience to governmental precept. Not infrequently a really strong government may be powerful enough to crush out prevailing customs by force. This was true, for example, of the Norman government of England and of the Revolutionary government of France.⁵⁶ The success of such an effort always depends, however, on the strength of external contributing factors. Unless new interests incompatible with the custom under attack are crowding in and lending aid to the governmental attempt to suppress it, the effort will ordinarily prove futile.⁵⁷ Government, in other words, like every human agency, must operate in general conformity with the tide of events, rather than against it, if it desires to accomplish results.

¶ Theories which identify law and custom seem generally due to a desire to find legal institutions fully present in their antecedents, and to prove law prior in time to the establishment of an organ of authoritative decision.⁵⁸ This view is perhaps most often pressed for the purpose of claiming "legal" character for international law. Instead of regarding the growth of law as an incident of the activity of an authoritative organ of decision, such a view promotes the notion that a court cannot come into existence until there is already in existence a law for it to administer, and thus plays into the hands of those who allege the uncertain character of existing international law as an argument against the establishment of an international

⁵⁶ It was also true of the government of the Hildebrandine papacy in the Church, which affords one of the most interesting instances of a successful war of authority against custom. See P. Fournier, "Un Tournant de l'Histoire de Droit," in *Nouvelle Revue de Droit Français et Etranger*, vol. 40, pp. 139-141 (1916).

⁵⁷ As in the case of the alterations in cultural and economic interests which made possible and sustained the legal changes effected by the Revolutionary government of France.

⁵⁸ "The creation of judges everywhere antedates the existence of formal law. But though formal law does not at first exist, the law itself exists, or there would be no occasion to appoint a judge to administer it." J. C. Carter, "The Ideal and the Actual in the Law," *American Law Review*, vol. 24, p. 759.

tribunal. To suppose that law must antedate in time the establishment of courts makes it impossible to understand the characteristic features of legal order, and leads to confusion between law and the conditions which make law possible.

Those who would find law antecedent to authority sometimes claim to discover it in the feeling of right and wrong of the parties to a dispute, and in their expectations of mutual behavior.⁵⁹ Professor Erich Jung, for example, assumes that there is law as soon as an individual demands a particular kind of conduct from others and begins to enforce what he conceives to be his "rights" against them. "Wrong in the basic sense is any violation of an interest, anything which is felt as unpleasant by the other party."⁶⁰ "Legal compulsion does not presuppose an authoritative establishment of law, a decision by the state."⁶¹ To speak of subjective unilateral claims of "right" as constituting legal rights seems a misnomer unless we conceive of law as supplying conflicting solutions for the same controversy, each corresponding to the claim of one of the parties.⁶² Law in such a sense would serve, not to adjust differences, but to aggravate them. Jung is therefore compelled to admit that legal rights

⁵⁹ The fact that individuals settle their disputes without recourse to authority by no means implies that they settle them according to law, or that law exists, as seems to be often assumed, e.g., by Jung, *Das Problem des natürlichen Rechts*, p. 98. One dispute may be brought to voluntary settlement with one result, another of substantially the same kind with a wholly different result. If uniform ways of adjusting disputes of the same kind grow up, as they occasionally do, they result in either a moral idea or a custom, which furnishes the raw material for a rule of law; but the difference is that such a custom or idea is followed only in the cases—not always numerous—where its content happens to satisfy both parties, while a law, whatever its content, appeals, because of its authoritative source, to all the interests connected with the maintenance of the group processes. Hence the difference in effectiveness between the rules of so-called international law and those of positive municipal law.

⁶⁰ Jung, *Das Problem des natürlichen Rechts*, p. 91.

⁶¹ *Ibid.*, p. 94.

⁶² The intransigence of such claims, supported by a subjective sense of right, is discussed by Goitein, *op. cit.*, *supra* note 52, pp. 257, 258, and by Dewey, *Human Nature and Conduct*, p. 83. Yet Jung undertakes to say: "The rules as to the existence or non-existence of a legal violation are derived and secondary; the obligation to lawful conduct does not exist because such rules exist, but these

are determined not so much by the subjective feeling of the claimants as by the opinion of impartial observers in support of the claim. This impartial opinion he identifies with the opinion of the community. "A right means that the person having it can apply force against him who violates it without incurring the condemnation of the community. The reaction of an interested individual against conduct which he regards as wrong, supported by the feeling of impartial observers, . . . is the original appearance of legal life."⁶³ "According to this view, international law, although it as yet possesses no means to establish a definition of violation binding on the parties, is nevertheless law, because the existence of a community among states, although not organized, is still so far recognized that the members of that community have certain duties with respect to one another. The undefined subjectivity of the judgment as to the content of those duties will inhere in the search for legal order among peoples so long as an organization of the supernational community is lacking."⁶⁴

The sentence last quoted appears to admit the inability of the unorganized opinion of a community to supply an objective test of the content of a right, i.e., to supply a determination of legal right in any sense in which the term is valuable. This is because in most disputes there is likely to be either a difference of opinion among the impartial group members paralleling the difference between the parties,⁶⁵ or else there will be an absence of interest in the dispute, or of any opinion about it, on the part of the

rules exist because the former obligation exists. Rules and concepts form themselves about uniform individual reactions which repeat themselves in similar situations because the individual members of a legal community react in a certain constant fashion to a particular kind of conduct." *Op. cit.*, pp. 100-101. This is true in so far as law conforms to settled custom, but nowhere else. Hobbes placed his finger on the crux of the problem when he pointed out the need for "a common measure of all things that might fall in controversy; as, for example, of what is to be called right, what much, what little, what *meum* and *tuum*." *Elements of Law* (ed. Tönnies, Cambridge, 1928), pp. 149, 150.

⁶³ Jung, *op. cit.*, p. 65.

⁶⁴ *Ibid.*, p. 93.¶

⁶⁵ This is admitted by Jung, *ibid.*, pp. 102-103.

members of the community not immediately concerned. It is for controversies of this character that adjudication is often most urgently needed in the interest of order. The determination reached by the organ of decision may be, and usually is, acquiesced in by the community; but public acquiescence in a decision does not necessarily mean that the decision is made *by* the community, or that the community would not have acquiesced in a decision of contrary tenor. Usually acquiescence by the community, no less than by the parties, is due less to affirmative agreement with the substantive content of the judgment than to willingness to accept an authoritative decision merely because it is authoritative. Failure to recognize this fact seems due to the widely prevalent confusion between a decision made *on behalf of*, or for the benefit of, the community, and acquiesced in by it, and a decision made by the community.⁶⁶ A decision accepted by the community without protest need not be the decision which would have been arrived at by majority vote, or by any other method of testing anything that can properly be called community opinion.

The defect in the theory which derives law from the impartial "community sense of right" is that it confuses a condition necessary to the existence of legal order with the active creative source of law. No doubt, law could not come into existence if men did not think impartially in terms of right and wrong, and recognize the fact that some measure of respect is owed to the interests of those with whom they regard themselves as living

⁶⁶ This confusion is enhanced by the legal doctrine, perfectly admissible if properly understood, which conceives a relation of principal and agent as existing between the organized community and its authoritative organ, and which therefore attributes to the former the acts of the latter. The identification was further promoted by the tendency of early thought to personify the group by a living symbol, god or king, which produced the view that the king was himself the state, or organized community. Goodenough, *op. cit.*, *supra* note 22, p. 86. Finally, when various forms of "popular" participation in government were introduced, it became commonplace to conceive the community as acting not merely in a legal but in an actual sense, without realizing that it can so act only through some specific form of organization, i.e., through some official mouthpiece.

in community.⁶⁷ But this category, or form, of thought does not exclude the widest variety of opinions as to the substance of the particular right and wrong of any given controversy. Law, on the other hand, means precisely a judgment of right and wrong, which, because of practical need for a decision, shall prevail over differences of opinion. As such, it can only result from a selection between competing views made by some organ recognized as competent to decide.⁶⁸ The unwillingness to admit that law is thus dependent on the action of authority is usually due to conceiving law as somehow a self-sufficient and independent agency of control, working like custom through a vitality of its own.⁶⁹ This view is often promoted by the perfectly proper desire to erect law into a means of control over authority. It seems, however, to be supposed that if law is to serve this purpose, it must derive from a source external to authority, so that the two can be set in competition. Such a conclusion overlooks the fact that, although law may be nothing more than regularity in the action of authority, this habit of regularity constitutes a valuable guarantee against arbitrariness.

⁶⁷ Thus, Jung is quite correct in pointing out that "a presupposition of the appearance of legal concepts is the existence of a community of members regarding one another with a certain amount of respect." *Op. cit.*, p. 67.

⁶⁸ According to Hirtzel, a recognition of this seems to have been a basic element in the Greek conception of *diké*, or "justice." *Diké* "is the blow which, falling between the parties, has equal and impartial authority for both, through which therefore right appears to realize itself in opposition to strife. Upon the dark background of strife right brightens in the form of the decision of the judge which brings an end to contention." *Op. cit.*, *supra* note 37, p. 103. "*Diké* points to a relationship between parties both of whom have rights—relationship in which right is not all on one side. . . . The free intercourse between such parties is regulated by *diké*, which determines the limits of the opposing claims. There is always at the basis of the nation a judicial decision, actual or conceived. Where this does not reach, *diké* also ceases." *Ibid.*, p. 128. To the same general effect, Goitein, *op. cit.*, *supra* note 52, pp. 265–275. See also Hobbes, note 62 *supra*.

⁶⁹ For a good exposition of this view, see Jenks, *Law and Politics in the Middle Ages*, pp. 295 ff., where it is suggested that law as a social force is older than human society, and inhered in animal instinct. If law is taken as identical with the tendency to uniformity in conduct, such a view is admissible; but to take law in such a sense is to make it impossible to understand many of its more important characteristics.

ness, even if the particular regularities followed may result from choices made by authority itself.

To exclude authority from the exercise of choice and discretion would destroy the function for which it exists. As was pointed out earlier, many decisions on behalf of a group have to be made by the group leadership in response to unique situations—decisions to make war, to migrate, to form an alliance, to establish a new cult. Such decisions can obviously not be made in accordance with rules. Even, however, in the case of decisions made to determine individual interest-conflicts, there are times when the adjudicating organ must reach its result without reliance upon an established rule.⁷⁰ This is true, for example, of every case of first impression, i.e., every case involving a controversy of a kind not before decided, and where there is no precedent to follow. These are precisely the cases which establish precedents, and hence rules of law,⁷¹ and they reveal the rule as always a by-product of the act of decision.

The power of discretionary decision which thus generates new rules for new types of controversy is called into play when existing rules of decision no longer work satisfactory adjustments in the face of new conditions. As a community develops, the chief problem connected with its governmental organization is how to secure that flexibility of direction which authoritative control is capable of supplying, while at the same time retaining the advantage of government through known rules. In other words, what is needed is a way of effecting changes from time to time in a body of rules which in the intervals of such change are treated as permanent. This process is what we today call legislation. The essence of the legislative function is precisely the power to depart from precedent and establish a new rule

⁷⁰ "Before the law, then, we have justice without law, and after the law and during the evolution of law we still have it as a non-legal element under the name of discretion with reference to the requirements of individual cases." Pound, "Justice According to Law," *Columbia Law Review*, vol. 13, p. 697. It is to conceal this element of discretion that the king is spoken of as "animate law," *supra* note 40.

⁷¹ See my article, "The Law Behind Law," *supra* note 44, p. 117.

for future decisions which shall differ from the rule applied in the past.⁷² The essential characteristic of social control through an organ of central decision, which is its capacity to effect special-interest adjustments to fit particular kinds of conflicts, comes to light in the exercise of the function of legislation, i.e., in the initial choice of a rule, from a number of possible ones, as the rule to be applied in future cases. Legislative action involves, openly and directly, an adjustment of interests by the legislator.

We are now in a position to summarize the part played by authority in community life. Through its power of decision on behalf of the group in the face of unique situations requiring action by the group as a unit, through its adjustment of functions and interests within the group in accordance with rules of its own choosing, and through its power consciously to readjust and adapt these rules to relatively permanent environmental changes, and thereby effect deliberate alterations in the structure of group processes, authority performs in the group-economy a function which can be likened to that of the central nervous system in animal organisms. Another metaphor is suggested by Tarde: "Political authority in a nation is what the conscious and personal will is in the human individual. Will means either removing the brakes from the most powerful desire, or choosing between desires in conflict. Social life is made up of multiple currents which cross and interfere. Political life consists in directing these currents, whether by restraining or activating them."⁷³ It must not be supposed that the processes and interests within the group owe their tendency and direction to the dictates of the group authority. They spring from countless centers of private initiative and currents of habit on which

⁷² For a good example of legislation among a primitive people, occasioned by a growing dearth of certain animals, see C. R. Moss, "Nabaloi Law and Ritual," in *University of California Publications in American Archaeology and Ethnology*, vol. 15, p. 237. For a general treatment of primitive legislation, see Hartland, *Primitive Law*, pp. 200 ff.

⁷³ Quoted from *Les Transformations du Pouvoir*, in A. Matagrín, *La Psychologie sociale de Gabriel Tarde* (Paris, 1910), p. 252.

the group authority from time to time acts. Most of what happens within a society results from other than central direction—from the undirected acts of individuals and from their incalculable reactions on other individuals. Sometimes the social result is formidable, as when a custom is set up and the power of social habit is drawn into play to give momentum to certain types of interests. Such a custom may bring to its assistance the action of government to eliminate obstacles which oppose its extension; or, on the other hand, government may interpose to check it in behalf of interests and processes which it threatens with destruction. Government, like the human will, is motivated by the very forces which it governs; its function is only to arrange them in a more orderly pattern—one which involves less friction and fewer frustrations than they might assume if unorganized and uncoordinated.

VI. THE NATURE OF POLITICAL AUTHORITY

The interactions between various agencies of social control within a group are multiple and continual. Custom establishes interests and processes which authority exerts itself to safeguard. The effectiveness of authority depends largely on the establishment of a custom of obedience to its decisions. Authority initiates and stimulates practices which in time become customs. Habits of customary coöperation enhance feelings of fellowship and a sense of community among members of the group, which lead to the voluntary adjustment of many differences, and to a willingness to submit even strongly felt interests to authoritative decision. The presence and activity of an organ of authority strengthens this feeling of community by "heading it up" into a center of loyalty and a mouthpiece of expression. Custom, voluntary adjustment, and authority alike make possible, and are made possible by, this fellow-feeling among the group members, which is a reflection of manifold individual interests implicated in established processes of group-life. It thus seems futile to ask which of the various factors of group-order is prior. All grow as the others grow, react on one

another, and so give its special character and meaning to the life of the group.

It is important, however, for understanding the nature of the interactions between the different control-agencies to note that in all but the simplest societies groups exist side by side, overlap, and combine into larger groups; and that, in reverse order, groups have a constant tendency to form smaller groups within their peripheries. Primitive man is ordinarily a member of a family, a village, a totem-group, and a tribe, and may also belong to a secret society, a club, and the war-following of a particular chief. A modern individual may be at once a member of a village, a county, a state, a business organization, a labor union or employers' association, a church, and a lodge, besides being a stockholder in numerous corporations. Within any one of these groups agencies of order of all types are usually at work—customs, voluntary adjustments, ethical ideas, authoritative leadership, and the rules of authoritative decision which we call laws. Each group has some of these agencies which are special to itself. A club or corporation, for example, has its own customs, its own governing body, its own rules and regulations.⁷⁴ Other controls run across and are common to a number of groups, as, for instance, the customs and ethical ideas of the wider society within which the smaller groups function. As we move from the smaller toward the wider groups, the group-processes directly involving any given individual tend to implicate his activities at fewer points, or at least to become more remote and less immediately visible. Thus an employee in a factory is directly implicated during the greater part of his waking hours in the processes of the factory. He is directly and immediately implicated in the processes of the whole nation only when he votes or serves in the army, and it requires an intellectual effort to grasp the connection of his own factory-processes with the remoter processes of national industry and commerce as a whole. This greater remoteness of group processes as the group becomes larger expresses itself ordinarily in

⁷⁴ See G. D. H. Cole, *Social Theory* (N. Y., 1920), pp. 40, 128.

greater looseness of organization of the larger groups. Their customs are less closely knit, their common ethical ideas are more vague, the sense of fellowship among their members is less strong. The result is that, within a wider group, adjustments which have to be made between the component groups or their members are often relegated to the operation of purely voluntary agency. If, however, the processes of such a wider group become, for one reason or another, more closely knit and more important to the special processes of the smaller groups, and so to the interests of individuals, the time may come when the need will be definitely felt for some more reliable and effective method of adjustment. New interests in the unity of a wider group than has yet been organized by custom grow up and create a basis for authority, and an atmosphere ripe for its reception.⁷⁵ Thus from time to time the unit-area of authoritative control enlarges; authority is established and accepted in a wider group than any in which it was hitherto operative. Villages become organized into tribes, tribes into principalities, principalities into kingdoms. Always beyond the limits of the community governed by authority there exists a more shadowy community whose processes are not yet clearly enough understood in terms of individual interest to sustain authoritative control. Such a community was Hellas when authority was confined within the city state, another was medieval Christendom, and still another is the economic and cultural world-community of modern times.

⁷⁵ Simmel has pointed out the greater necessity for specialized organs of authority in larger than in smaller groups. "Small groups are characterized by the fact that they require a larger participation on the part of individual members. . . . Large groups are forced to build special structures to take over the function which the immediate reciprocity between elements fulfills in small circles. The social-unity can no longer be produced and preserved by the immediate relationships between individuals, and the large group must therefore build special organs in which the reciprocal activities and relationships of its elements can crystallize," N. J. Spykman, *The Social Theory of Georg Simmel* (Chicago, 1925), pp. 136-137. Therefore, in a large group, custom, voluntary adjustment, and informal leadership cannot produce order without authority in the way which is possible in small groups.

There is no more important aspect of the growth of institutions than this extension of the principle of authoritative control from smaller to wider groups and areas. Sometimes it comes about voluntarily through federation or voluntary annexation; more often it has come forcibly through conquest.⁷⁶ The economic and cultural unity of the eastern Mediterranean basin at the end of the fourth century B.C. had, for example, developed processes for the smooth functioning of which the existence of a common authority offered distinct advantages, —advantages which came to be recognized, once such authority was brought into existence. To bring it into existence required, however, the conquests of Alexander and the forcible extension of Roman power. As authority thus follows in the wake of a wider linking up of interests into a new and broader community, so its establishment tends to knit such a community together by new bonds of interest, generates sentiments of common feeling and common destiny which give to the group a new stability of organization and outline, and thus serves to convert loosely organized processes functioning through voluntary adjustment into more secure and permanent patterns.

The establishment of authoritative control over a wider group leaves the principle of authority still operative within the smaller component groups. Authoritative decisions and adjustments are still made in the family, the village, the club, after a center and organ of authority has been set up in the tribe or nation. Within their own groups these minor authorities still settle disputes, initiate group action, modify and remould the processes and customs of the group. Their relations with one another still find adjustment largely through voluntary action or by the growth and operation of custom. The only difference is that, over and above such informal agencies of adjustment, there is now available between the groups, or between individuals belonging to different groups, the additional instrumentality of authoritative decision. The higher authority belonging

⁷⁶ See the brilliant chapter, "The Building of Empire," in a brilliant book MacIver, *The Modern State* (Oxford, 1926), pp. 50-60.

to the wider group no more supersedes the action of the smaller centers of authority than the activity of the latter supersedes, within their own spheres, the operation of custom and voluntary adjustment. The higher authority is called into play only to adjust particular conflicts, to effect special modifications of processes, in the same way that authority within a narrower group intervenes only to accomplish results which lie beyond the power of custom and voluntary adjustment. In one important respect, however, the position of the local centers of authority is altered by the establishment of a center of wider authority—the latter must, in the event of conflict, be supreme. This follows from the nature of authority as a final organ of adjustment in the group within which it operates. If it is to perform this function in a group comprising other groups, each having an authoritative organ of its own, it must be in a position to effect adjustments between the action of these minor organs whenever such action causes conflicts which endanger the processes of the wider group.

Authority vested with this kind of supremacy over all groups and individuals within a particular area is commonly called "political." Political authority itself may be, and in a complex society usually is, organized on a hierarchical principle, i.e., distributed in local centers, subject to various higher centers, which in turn are subject to a supreme, or ultimate, repository of such authority. The problem of the relation between these different centers of political authority presents many of the same elements as the problem of the relation between political and other authorities. Not infrequently the relations between any two organs of authority is purely voluntary. Such relations may be reduced to a measure of order either by spontaneous subsidence into customary patterns or by deliberate reduction to the terms of a contract. So long, however, as neither one of the two authorities is recognized by the other as competent to interpret or readjust such relations, and so long as there is no superior authority which both recognize as having such competence, it cannot be said that political relations exist

between the two. Thus if the relation of one political authority to a supposedly superior authority rests altogether on custom or a contract which the former is itself free to interpret, the former is really "independent."⁷⁷ Similarly, if an economic or social group is free to interpret its relations to the political authority of the community of which it forms a part, it stands in fact outside the politically organized community, and forms, as we say, "a state within a state."

The competence of political authority to determine the relations between the groups and individuals subject to it thus rests in the last analysis on its competence to determine its own relations to them. Its decision of a dispute is not properly authoritative—it is merely mediatory and informal—if neither or both parties to the dispute are in a position to say whether or not it is competent to exercise jurisdiction, i.e., if its jurisdiction depends upon their volition, as applied to the particular dispute in question. To this extent, one of the elements of authority in the political sense is always competence to determine its own competence.⁷⁸ On no other terms can it discharge the function which it exists to discharge. This, of course, does not mean that it must, or will, always determine cases of doubt in its own favor. The power to assume carries with it the power to refuse jurisdiction, and one of the things which can fairly be expected of government is that it will allow maladjustments within the community to work out their own solution where a solution seems likely to result from voluntary action or from the gradual adaptation of interests to one another. In a socially healthy community, many of the most important conflicts of interests will solve themselves in these informal ways. Such solutions, where possible, have an advantage over authoritative adjustments in that they result directly from the free action of

⁷⁷ See the chapter, "The Nature of the Composite State," in Willoughby, *The Nature of the State* (N. Y., 1911), pp. 232-275.

⁷⁸ For the so-called theory of "Kompetenz-Kompetenz," see Merriam, *History of the Theory of Sovereignty Since Rousseau* (N. Y., 1900), pp. 109-196; Willoughby, *op. cit.*, pp. 192 ff.; *American Political Science Review*, vol. 12, pp. 199-200.

the parties whose conduct they limit, and are therefore accepted on their merits, and on the basis of the interests directly involved in controversy, rather than from the indirect and ancillary interest of respect for authority. An important element of the art of governing is to predict successfully whether such voluntary and natural adjustments will occur.^{78a} If they seem unlikely, government must exercise its discretion to determine whether or not its interference is desirable to maintain or further important group processes,⁷⁹ and what results are to be expected from such interference. Governmental action alone cannot save a group from disruption or stagnation; as has already been pointed out in another connection, it cannot overcome an adverse tide of events. What it can do is to lend effectiveness and strength to forces within a community which are moving in one direction rather than another. Its action to accomplish its objective must be supported by interests within the group having a strength of their own. On the other hand, much that government does in matters relatively unimportant or obscure serves to affect the play of forces which are too strong for it to contend with openly.

This consideration raises the important question of the relation of political authority to the use of force as a sanction. The elimination of private force between individuals and between subordinate groups as a means of furthering their interests was the earliest, and must always remain the chief, object of governmental intervention in the adjustment of interest-conflicts. There are times when such private resort to force can be prevented only by the actual or threatened use of greater force. Therefore the right to use force is clearly a necessary attribute of governmental power if it is to discharge its task.

^{78a} More and more, governmental intervention is taking the form of stimulating and guiding voluntary adjustment, rather than that of imposing authoritative standards.

⁷⁹ On the other hand, it is not proper to assume, as many writers do, that the use of state authority represents a pathological condition. E.g., Jung, *op. cit.*, *supra* note 59, p. 98. Resort to authority is as inevitable a social phenomenon as voluntary adjustment.

There is a tendency in present thought to under-estimate the effectiveness of force when used with prudence and intelligence. Because force has often been employed by government in support of interests which in retrospect have not commended themselves to progressive thought, and because it is obviously preferable that governmental decisions should be accepted voluntarily by those whom they affect, men are sometimes tempted to carry the argument further and deny that force can ever be effective for accomplishing the purpose for which it is employed. It is true that a direct effort by government to eradicate by force deeply rooted practices or interests, or to compass by force large and ambitious designs, almost always creates more conflicts than it resolves. But this does not mean that force applied adroitly at critical points with sufficient tact and persistence may not result in undermining, and ultimately eliminating, practices which government wisely or unwisely desires to overthrow. It is impossible, for example, to survey the history of the Middle Ages without recognizing that many practices and customs were crushed out largely, although of course not exclusively, by the military power of government.⁸⁰ The view seems sometimes to be taken that because these alterations were accomplished by force they must have been unfortunate.⁸¹ No such judgment is necessary. The innovations in question eliminated the irregular resort to private force on an enormous scale, and released and coöperated with economic and cultural interests which were making for the organization of social processes over wider areas than before. Had it been possible to achieve these results without force, the use of it could fairly be condemned; but there is no reason to suppose such a possibility.

Control by political authority requires that force shall be used exclusively by the organ of authority or by agencies and persons

⁸⁰ Vinogradoff notes that the establishment of the supremacy of the "common law" over local customs in England "represents the juridical influence of the military class." *Custom and Right*, p. 30. See also Maine, *Early Law and Custom*, p. 186.

⁸¹ Salt, "The Local Ambit of a Custom," *Cambridge Legal Essays* (1926), p. 282.

employing it with the permission of authority. In this sense, the right to use, or license the use of, force becomes a distinguishing mark between organs of political authority and all other agencies and individuals. This obviously does not mean, as is sometimes supposed, that political authority rests on a basis of force.⁸² It rests on obedience, whether produced by reverence, habit, rational conviction, or the fear of compulsory sanctions. That it cannot be said to rest ultimately on force appears from the fact that the use of force against recalcitrant individuals will not be effective unless acquiesced in, and if need be supported, by the preponderance of the impartial elements in the community not directly concerned with the controversy. Only in extremely rare instances can such acquiescence and support be procured by terrorization of the whole community. Where such a condition prevails, as in the military government of a conquered province, or in the great "tax-gathering empires" of antiquity and the Orient, the result is not a typical manifestation of political life, although it may in some instances be a stage toward development of such life. Seeley has termed these abnormal political structures "inorganic states,"⁸³ to emphasize the normal relation of government to the community as organic, in the sense of reciprocal, i.e., to indicate that government normally enlists obedience by deriving its purposes, and the standards which determine its judgments, from tendencies at work within the community, and not by forcefully imposing external and alien standards on an inert and unwilling group.

If government, then, is to make its proper contribution to social order, it must so shape its acts that they can be counted on to secure the willing support of a sufficient part of the community to make them effective without relying exclusively or

⁸² The matter has never been better put than by Professor MacIver: "Coercive power is the criterion of the state, but not its essence." *Op cit.*, *supra* note 76, p. 223. "It is true that there is no state where there is no overruling force. This is the *differentia* between the state and all other associations. There is no state where other associations arrogate to themselves the exercise of compulsion. But the exercise of force does not make a state." *Ibid.*, p. 230.

⁸³ *Introduction to Political Science* (London, 1911), pp. 72-76.

principally on the sanction of force. For this reason, in the case of all its important acts it is desirable that it should have means of discovering in advance with some degree of certainty whether or not they will be acceptable to the community. To provide this opportunity seems to have been the chief function of those primitive assemblies of the tribe, or at least of the tribal warriors, which lie at the beginning of "popular" participation in government, and which enabled the tribal leadership to discover whether or not their measures would meet with opposition.⁸⁴ The primitive assembly was not a voting or enacting organ. It was a more or less informal body of onlookers in whose presence the processes of government went on in order that they might be subject to the check of public disapproval. At a later stage of political development, when government had extended over a wider area, representative assemblies were set up, primarily for a different purpose—to enable the permanent organs of government to keep in touch with different elements and sections of the community, and become informed, not only of their opinions, but also of grievances and conflicts requiring adjustment.⁸⁵

In these ways contact was maintained between government and the community, which in time resulted in the formal infusion of what we speak of as a "popular" element into the governmental mechanism itself. The assembly, primary in the one case, representative in the other, came to be entitled to

⁸⁴ For the limitation of the power of the early Greek assemblies to informal approval or disapproval, see Halliday, *Growth of the City-State*, p. 73. For a general discussion of early assemblies, Botsford, *The Roman Assemblies*, pp. 168-171. At p. 171 Botsford cites instances where the king acted in spite of disapproval by the assembly. In historic times the Spartan assembly expressed its will by shouting and not by vote. Thucydides, I., 87. So the Florentine *parlamento* in the fifteenth century. *English Historical Review*, vol. 42, p. 641. It is sometimes thought that the voting of a law by the early Roman assembly was merely the assumption by the people of an obligation to obey it. "The citizens bound themselves to the acceptance of the proposition on an oral promise." Botsford, *op. cit.*, p. 179.

⁸⁵ G. B. Adams, *Constitutional History of England* (N. Y., 1921), pp. 168 ff; A. F. Pollard, *Evolution of Parliament* (2nd ed., London, 1926), pp. 36-60.

perform some of the functions of government, and to contribute directly to making some of its more important decisions. Samples or representatives of different interests in the community were incorporated into the governing organ, in order that its decisions might represent a direct and immediate voluntary adjustment of these interests within the governing body. The theory underlying the whole elaborate organization of modern representative government is that every source of opposition to a proposed governmental act shall have an opportunity to voice its opposition before the act is decided on, and shall, furthermore, be in a position to exert against the adoption of the act an influence in proportion to its strength. This objective can never be attained with theoretical perfection. Difficulties of apportionment, difficulties due to the multiplicity of issues at elections, difficulties in finding a standard to measure the weight of respective interests, all make the result hardly better than a crude approximation. But no matter how perfect the apparatus might be for making governmental action a transcript of the relative strength of interests in the community, the fact would remain that in every controversy the decision must go against one of the parties—that, however majorities are measured, there will always be a majority and a minority. In other words, on no disputed point can government act without opposing the preferences of some of its subjects.

It may be that some of these preferences are so deep-seated, and that the action proposed to be taken in opposition to them is so relatively unimportant for maintaining vital group processes, that government would do well to refrain from overriding them. Whether these special conditions exist can, however, be determined only by government itself, as when, for example, it exempts religious objectors from compulsory military service. There is simply no other organ available to make the decision. So-called public opinion, which is sometimes appealed to, always speaks with a divided voice, and can be made to answer whatever the party appealing to it desires it to answer. If government, therefore, acting through its established forms, decides

against the preference of a minority, there can properly be no claim of governmental usurpation. The mere existence of a dissentient minority cannot be regarded as establishing a necessary bar to governmental action, since otherwise it would be impossible for government to act in practically any case in which its action is valuable. Accordingly, in the ordinary case, as where vaccination is made compulsory against the religious scruples of a strong minority, no question is raised concerning the propriety of government's insisting on obedience by the minority.

In order to protect government from the danger of arousing the antagonism of a minority powerful enough to require greater use of governmental force than is compatible with healthy political processes, it is sometimes wisely provided that governmental action shall not be taken unless assented to by more than a simple majority. Even when this safeguard has been complied with, however, there are instances where a minority remains permanently dissatisfied.⁸⁶ To such a minority three possible courses are open: (1) to seek by persuasion and agitation to induce the indifferent or impartial elements in the community to join with it in an effort to secure a reversal of the offensive governmental action through the established governmental mechanism; (2) when the interest invaded is felt with sufficient strength, to seek peaceably or forcibly to withdraw from the jurisdiction of the offending government and set up a new political organization; or to seek to overturn by violent means the existing government and substitute in its place one which will respect the interest in question; (3) to pursue a course of persistent and concerted disobedience to the objectionable governmental ruling, and in this way seek to coerce government into a reversal of the ruling, or an abandonment of the attempt to apply it.

The last of these alternatives is at present receiving widespread discussion in connection with the National Prohibition

⁸⁶ See article by Dom Luigi Sturzo, "Right of Resistance to the State," *Contemporary Review* (Sept., 1928), vol. 134, pp. 312 ff.

Act. Our only concern with it relates to its bearing and effect on the function of government as an agency of social control. Such control, like all human contrivances, never functions perfectly according to its theoretical pattern—it only approximates to the pattern. There have always been instances where laws have been in large measure obeyed by the community, but disobeyed by certain elements with the connivance of government, because the attempt to enforce them against such dissentients by physical compulsion would involve disturbances which would place too great a strain on the unity of the body politic. Such a condition is not unnatural in the case of new laws whose adoption has been accompanied by controversy, and to which it may require time for the community to adjust itself. As this adjustment occurs, the opposition normally dies down, the instances of disobedience become fewer, and ultimately the law causes no more infractions than can be safely dealt with by the application of compulsory sanctions. Again, in the case of archaic laws arising out of a condition of society which has passed away, government, without a formal repeal, may allow violations to go unpunished. The disobedience involved in these instances represents only the inevitable mal-adjustments incidental to the operation of any institution.

On the other hand, a condition which may be described as truly pathological exists whenever the opposition of a minority to a recent law increases in stubbornness, and government allows such opposition to paralyze its policy of enforcement. Such a condition indicates an abnormal attitude on the part of government as well as on that of the community. If government disclaims responsibility for carrying into effect the policies it has adopted, it is likely to adopt policies recklessly, and thus court further disobedience and bring itself into increasing disrepute. If an element in the community persistently and permanently places itself in opposition to government, it breaks down the psychological attitudes on which the effectiveness of government as an agency of social control depends. The inevitable result of this state of affairs is that government more and more comes

RECENT CHANGES IN THE LOCAL GOVERNMENT OF ENGLAND AND WALES

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The purpose of this article is to describe the principal provisions of the Local Government Act recently passed by the Parliament of Great Britain, and to give some account of the forces behind the changes, without in any way touching on the controversies of political parties. The hand and brain of man have speeded up life; social conditions change ever more rapidly, and social institutions must change with them, those of government included, though some seem to believe that they are as the rocks of the ages. The Local Government Act contains 138 sections and 12 schedules, and there is room in this paper for only the more important of its provisions.

There has been in Britain for many years a steady stream of discussion, indeed at times floods, on needed changes in the structure of local government. Minds were prepared, therefore, for reforms, even if some people had almost come to the conclusion that the obstacles would prevent more than proposals. Whatever the differences of political parties, there has been a current of continuity in the development of local government throughout the big changes of the last century. Political wind and weather may have given a twist to a branch here and there, but the main outline of the old tree has been fixed by deeper causes; the big changes have been produced by underlying social conditions, independent of party; and the Local Government Act, in most of its provisions, will be found to be in line with this continuity, whatever the conflicting views on matters of detail.

I. ADMINISTRATION OF POOR RELIEF

During the past century there has been a steady consolidation of local government authorities. Instead of the old *ad hoc*

authorities, each constituted for a specific service or set of services, functions have been concentrated more and more in one authority for each district, a process of "rationalization" adopted long before the blessed word became the accepted means of salvation in industry. The last big previous step in consolidation was effected in 1902 when the work of elementary education, hitherto under special local bodies, the old school boards, was placed in the hands of county councils and the larger urban authorities.

The one important sphere of local government which remained isolated, revolving in its own orbit, was that of poor law relief. A comprehensive inquiry into the poor law had been made, and changes recommended, as far back as 1909, but no alterations of structure had been effected. An even deeper issue was raised than that of authorities. Proposals were put forward in certain quarters for what came to be known as "the break-up of the poor law." The root principle of the poor law, a principle born of grim experiences in the last part of the eighteenth century and the early part of the nineteenth, was that relief was to be afforded only to destitute persons, and to be afforded under such conditions as would not encourage those who should fend for themselves to look to the public purse for their maintenance—the principle of "less eligibility." In actual fact, this principle had long ceased to be applied, even in appearance, to the young or to the aged and the infirm.

Further, in the time since the poor law system had been established, in the 1830's, the general local authorities had undertaken, or had been entrusted with, many new social services, and it was contended that the old foundation of the poor law was antiquated. Education had become a public service and a public charge. The welfare of mothers and infants was increasingly supervised. A great deal was being done to combat sickness, as in the case of tuberculosis, although the general provision of hospitals, for instance, has not become public service, nearly all the general hospitals being still voluntary. But even in this matter it was urged, with substance, that some of the hospitals maintained by the poor law authorities had in fact

become in large part general hospitals, not places reserved for the "poor" in any strict sense. In addition, old age pensions (recently extended) had been provided by the state, and rational compulsory schemes of insurance against sickness and unemployment had been instituted.

The special poor law authorities—so it was contended by these reformers—had become only a survival, and the various services which were rendered by them should be handed over to the general local authorities (except that measures for dealing with the able-bodied unemployed should be undertaken by the state); and these local authorities, it was further contended, should render services to persons in need according to the particular need, so that, for instance, if a man required hospital treatment and could not provide it for himself or obtain it at a voluntary institution, the health committee of the local authority should come to his aid, or, if a child lacked maintenance, because its parents either were dead or were in poverty, the welfare of the child should become a case for the education committee.

It is well to note the social philosophy underlying the systems. In the one case, that of the poor law system of 1834, it is that of a stern and unbending individualism—that persons should fend for themselves, should make their own arrangements for the needs and emergencies of life, and that the state should step in, either directly or through local bodies, only in the last resort, and even then under strict safeguards. In the other case, that of "the break-up of the poor law," it is that the state should undertake to provide, as part of its business for the community, a number of essential services. Pushed to extremes, it might lead to socialism, but many of those who have supported it would hotly deny that it would have any such consummation.

It would be a mistake, however, to attribute changes in this, or indeed in any other social direction, solely, or even largely, to doctrine. Doctrine is often but the giving of a name or a system to forces already in play. Feeling is the general force behind reforms. The tide of human sentiment, the feeling often of individual helplessness before the industrial juggernaut, the

sense of social solidarity, of the dependence one on another, the growing complexity of life and of its services—all these, even more than mere doctrinal aims of social organization, have played their part in producing changes.

What the Local Government Act does in the matters to which I have referred may be summarized briefly as follows:

1. Boards of guardians (the special poor law authorities) are abolished. Their work is handed over to the larger local authorities, the county councils and the county borough councils. Some measure of the change is afforded by the number of authorities of the various classes in the country; there are 625 boards of guardians, but only 62 county councils and 83 county borough councils.

2. These councils are required to appoint a special committee, the public assistance committee, for the transferred functions; with the qualification, however, that where any transferred function is similar to work now done by a council under its general powers (such as education, maternity and child welfare, treatment of tuberculosis), the council is authorized to arrange that the function shall be carried out under these general powers (not simply as a poor law function) by the appropriate committee of the council. That is, "the break-up of the poor law" is rendered possible to a large extent, but it is left to each council to decide how far it will go. The government stated that its intention was that the councils should make use of these powers, but that it was not advisable to place a definite obligation upon them, because when and to what extent proper use could be made of the powers depended on the facilities, in particular institutions, at the disposal of each council.

3. In the eyes of many persons, one of the great drawbacks of large areas of government is that they may weaken democracy; that they may sensibly reduce the effective opportunities of self-government available to the ordinary citizen; further, that they may open the door to government by officials, to bureaucracy, the awful bugbear of the British mind! The act provides for the appointment of "guardians committees" to local areas within each county. These will be subordinate committees

of the public assistance committee for the administration of relief. A significant feature about them is that they bring the local councils into touch with the administration of public assistance. For each committee is to include persons nominated by the councils of the towns and rural districts within the area of the committee. It is also to contain the members of the county council elected for divisions within the area of the committee and, in addition, other persons appointed by the county council who need not be members of the council, but not to a total of more than one-third of the members of the committee. It is intended that advantage shall be taken of this latter provision to appoint persons of experience.

4. Each county and county borough council must formulate a scheme by which it proposes to carry out the new functions, and this scheme is subject to the approval of the minister of health.

II. REDISTRIBUTION OF OTHER ACTIVITIES

Another tendency in English local government during the past hundred years has been toward the enlargement of areas, for administration and for charges. In early days of the nineteenth century, the parish was the usual unit of charge and, to a large extent, of administration, including poor relief and roads. As population grew and transport advanced and ties between areas became closer, the inconvenience and inequity of the parochial basis became more and more obvious. It was superseded for the poor law by the unions, each with its board of guardians; for roads, by the increasing number of areas with special urban government, and, in rural areas, alternately by the rural district councils. The parish was superseded as the area not only of administration but also of charge (the area over which the charge is levied equally according to the taxable basis). In the case of roads, the extension of the unit went further, because the main roads, the ways of principal traffic, were placed under the county authority and made a county charge. Contributions were also made by the state toward roads, but of this I shall write later.

Since the date of these last changes, the world had undergone another transformation. The motor vehicle had arrived. Distances had been greatly shortened. Population had grown. Industrialism had advanced. The services and burdens of local authorities had become much heavier. More and better roads had to be provided. Numerous new social services, undreamt of even by our fathers, had been undertaken. The greatly differing weights of local burdens loomed large.

Not least important was the fact, common to industrial countries, of the concentration of industry, especially of the basic industries like coal and iron, with corresponding concentrations of population, mostly of the working classes. This same massing of persons of small means also occurs in districts within, or near, the borders of the very large towns (or cities; in Britain even the large urban communities are still called towns; "city" is a special designation applied only to a few of the towns).

A local community of this kind is on too narrow a basis for assured stability, if it has to stand entirely on its own foundations. Its means may be relatively scanty, so that the many demands of modern life may necessitate heavy taxation, if they have to be borne unaided. On top of this weight, unemployment may at times fall with crushing force upon an industrial community. The consequence is the distressed or necessitous area.

This, in bare outline, is a problem with which British statesmen have been confronted for many years, a problem sorely intensified by the post-war severities of serious unemployment, monetary depreciation, and heavier taxation.

The Local Government Act provides for wider areas of charge. For relief of all kinds, it spreads the burden over the whole county (or county borough in the case of the largest towns); in an area of this size there will usually be broad shoulders of rich and poor districts, better able to bear the burden. This may not be true in the same measure for the county boroughs as for the counties, but there were historical reasons why it was not practicable to merge even the smaller of these county boroughs in the county.

In the case of roads also, the burden of construction and maintenance, which was pressing with special weight on some rural districts, will become a county charge, with this exception, that in towns the local roads (as distinct from roads of through traffic) will remain a charge on the town; county boroughs are excepted. In rural areas, all public roads of every description will become county roads, under the county council.

I have mentioned that, in the transfer of poor relief from the smaller area of the union to the larger area of the county, there were doubts in some quarters whether democracy would not be reduced and bureaucracy increased, and that this fear was allayed to some extent by providing for the appointment of local guardians committees. This same dislike of taking from the smaller authorities and giving to the larger appeared with even more vigor in the matter of roads, because the smaller authorities continued to function for other purposes. The act contains a number of provisions to conciliate such fears.

In the first place, every urban authority with a population of over 20,000 persons can claim to carry out the road work in its area for the county council, with the exception of special arterial roads. This follows a practice which has been in force since county councils were first established in 1888. The cost remains a county charge. In the second place, county councils are empowered to delegate road work also to the smaller urban authorities and to the rural district councils. But this is at the discretion of each county council; there is no compulsion, except to this extent: it will be recollected that county councils become responsible for all public roads in rural districts, the local as well as the through roads (the unclassified as well as the classified roads, as it is phrased); if a county council refuses to delegate to a rural district council the functions on local roads, the latter can appeal to the minister of transport, and it will be for the county council to show cause for the refusal, on the ground of the economy and efficiency of highway administration throughout the county or of the special circumstances of the district. In the case of the through, or "classified," roads, the discretion of the county council whether or not to delegate the work is absolute.

New provisions are made also in the matter of town planning—city planning, as it is called in the United States. Our schemes of town planning relate mainly, not to already built areas, but to areas where development is to be expected.

Hitherto, county councils have not had any town planning powers. This has not been free from difficulty, especially because, outside the county boroughs, the principal roads were managed by the county councils. Now that the road powers of county councils are to be so greatly enlarged, it has become essential that they should exercise town planning powers. But a town planning scheme should be a coördinated whole. Unity of design is one of its principal virtues, as against spasmodic development where there is no general plan. How secure is this unity, where there are two authorities, county council and county district council, exercising powers within the same area?

The act attempts to resolve the difficulty by affording means by which schemes shall be prepared jointly by the county council and the county district council, or by a number of them acting together—and joint regional committees are now general throughout the country, although most of them are still advisory. The town planning scheme, when made, may contain provisions to secure that the responsibility for regulating or carrying out, as the case may be, the several matters in the scheme is appropriately distributed between the several authorities. Every scheme is subject to the approval of the minister of health.

It may be mentioned also that the act makes changes in quite another sphere than those with which I have been dealing, namely, in the registration of births, deaths, and marriages, again by transferring functions to the largest authorities. This work has hitherto been done by officers appointed by the boards of guardians. It had no connection with the main functions of these boards, but had been allotted to them because of the historical accident that, at the time when the national system of registration was instituted (in 1836), the boards of guardians were the only local bodies of a representative character universal throughout the country. The act transfers the functions of the

boards of guardians in this matter to the county councils and the county borough councils, so far as the local functions are concerned. Additional changes are made for the efficiency and convenience of the service.

III. PROVISION FOR REVIEW OF LOCAL GOVERNMENT AREAS

Still another part of the act aims at improving the areas of the various authorities within the county (town councils, urban district councils, and rural district councils). Many of the urban areas were constituted separate units of local government in a somewhat haphazard fashion very many years ago. The requirements of local government have been transformed in the last fifty years. There has not been any systematic revision of local government areas. Individual alterations have been made from time to time—a large number of them—but there has been no general review. There is no gainsaying, therefore, that some of these areas are not well adapted to modern needs. That was the conclusion reached by the royal commission which has been considering the subject, and in a report which it issued last year it recommended a number of measures which have now been incorporated in the Local Government Act.

An obligation is placed upon each county council systematically to review the areas of the districts within its borders, that is, the areas of the town councils and the urban and rural district councils (but not county borough councils, which are wholly outside the ambit of the county councils). The councils are required to do this within three years, unless the time is specially extended, and to submit their proposals to the minister of health, with whom final decision rests; and he may confirm the proposals or reject them or modify them as he thinks right, after fully considering any representations which may be made to him. The object is to secure districts of sufficient size and financial strength to carry the weight of duties imposed, so far as this is possible. It may not always be possible, because of geographical and other difficulties. The county councils are enjoined freely to consult all interests before making their proposals.

County councils may undertake later reviews, but an interval of at least ten years must elapse between any two reviews; frequent alteration of areas does not conduce to smooth government. There are provisions for individual alterations in the meantime, where required.

IV. IMPROVEMENT OF HEALTH SERVICES

There are other provisions designed to secure better service, especially in the smaller units of local government. There has long been a movement for the appointment as medical officers of health of men who give their whole time to the public service, though not necessarily in one appointment. A large number of the local authorities are too small themselves to employ a whole-time medical officer. In many cases a number of neighboring authorities have combined to appoint a whole-time official; but progress has not been as rapid as is desired.

The act places an obligation on each county council to prepare and to submit to the minister of health a scheme for employment by the councils throughout the county of medical officers who will devote their whole time to the public service. When necessary, this may be done either by combining a number of neighboring districts for the purpose or by arranging that the same man shall serve as medical officer to a district council or councils and also as an assistant medical officer to the county council. This latter plan has already been adopted in some cases, has proved satisfactory, and is much favored by many persons, because it has the advantage of bringing within the sphere of one doctor all the public health work of an area, whether it comes under the district council or the county council, and close liaison is thus maintained between the different activities of the councils.

Another sphere in which in the past it has not been easy, or even always possible, to overcome the handicaps of small or scattered authorities has been the provision of hospitals for the treatment of infectious diseases. The duty of providing the necessary hospitals lies with the sanitary authorities, i.e., the town and the urban district and rural district councils, but some powers have also been given to the county councils.

A further duty is now placed on county councils—that of preparing and submitting to the minister of health a scheme so that sufficient hospital accommodation for infectious diseases shall be available for each district, again by combining districts for this purpose, or by arrangements under which the hospital of one authority (a neighboring large town, for instance) shall also be available for a neighboring small town or rural area, or by the provision of a hospital by the county council itself.

There are also provisions in the act designed to secure that all the public services for the welfare of children shall be brought under one authority, the object being to secure that the council which is responsible for elementary education, and therefore also the school medical service, shall, in addition, be responsible for maternity and child welfare, the notification of births, and the supervision of midwives.

V. DERATING OF INDUSTRY AND AGRICULTURE

The local taxation of England and Wales is on a narrow (though convenient) basis. It is levied almost wholly on real property. The annual value of each item of real property is ascertained, and this value, with some allowances, is the basis (the "rateable value") on which the local taxes (the "rates") are raised. Thus, if the effective rateable value be £1,000,000, and £750,000 had to be obtained in rates, the amount of the rate would be 15 shillings in the £—a little more in fact, to allow for losses, etc.

This system was first established in the days of Queen Elizabeth, when modern industrialism with its expensive buildings and plant had not been developed—at a time, too, when public charges were on a modest scale and when real property could be accepted as a moderately satisfactory index of means, although even then not an adequate criterion. It was indeed intended to include personal property, but practical difficulties defeated the attempt. Conditions became very different when factories and other industrial establishments multiplied many fold, and when public services, and corresponding public burdens, rose higher and higher, so that now

there were mountains where formerly there were but hillocks. It came to be felt that some change should be made. But what change? Investigations, public and private, were many. But the harvest was not large—little beyond additional central grants and partial relief of agricultural land.

Proposals have been made that local authorities should be empowered to break new ground in local taxation. The possibilities of a local increment tax on land values have been canvassed, and also of a local income tax. For various reasons, neither has passed beyond the stage of discussion.

Another proposal has taken a different direction. It is based on a distinction between the groups of services rendered by local authorities: (1) those services which are of primary need and of primary benefit, for the district itself, such as water supply, sewerage, the collection and disposal of refuse, and numerous other services of this kind; and (2) those services which, while of benefit to the district, are of national importance and, indeed, a national need, such as education and, under modern conditions, police. The one class of services are called "beneficial"; the other, "onerous". Both groups are performed by the local authorities, but for the former the local area is a unit more or less complete, while for the latter it is not more than a unit in a larger whole, the state. The distinction between the services is not clear-cut, but it is there.

The proposal was that the local authorities should continue to bear without aid the cost of the beneficial services, but that the whole, or the greater part, of the cost of the onerous services should be borne by the state, administration being left to the local authorities with whatever supervision was necessary. Already the principle has been adopted in large measure, in the empirical fashion of the British people. Fifty per cent, broadly, of the cost of education and of police is now paid out of the national exchequer, and, out of the central road fund, the same proportion for Class I roads and a smaller proportion for Class II roads (proportions which are now to be increased). How to maintain local autonomy if the measure of grant is substantially larger, at any rate how to maintain it without that

detailed inspection which might go far toward destroying it—that is a practical problem which weighs heavily with many persons of experience, quite apart from the theoretical merits or demerits of the proposal.

The Baldwin government chose a different course, one in line with that adopted first in 1896 and extended in 1923, when agricultural depression and the burden of local taxation led to the reduction of the burden on agricultural land, ultimately to one-fourth. It is worthy of note that the acts of 1896 and 1923 were temporary and were periodically renewed. The government considered that the pressure of local taxation bore with special unfairness on productive industries, because of the large outlay in various forms of real property which was a condition precedent to their activity, and because local taxation was in proportion to the outlay. There was not, it was felt, a fair distribution between different kinds of property. Social conditions had rendered real property an inadequate index of taxable wealth. Industry was penalized. Some of the basic industries, such as coal, iron, and steel, which required an exceptional amount of real property for production, were considered to be especially hard-hit by the system, and that at a time when depression pressed heavily upon them and post-war reconstruction had to be faced. Agriculture also was still needy and pressing for relief.

These were the contentions. Doubts were expressed by some whether it was not right to regard many of the local services as essential for industry and therefore properly included in its first cost; also whether, if a large measure of relief were given to industry, the interest of its local leaders in the efficiency and economy of local government might not be seriously weakened—and the rough and tumble of electioneering was already an obstacle to their coming forward to take their part in the local councils. In particular, objection was raised to relieving industries which were flourishing. Local authorities hesitated because they feared lest the increasing needs of growing population and rising social demands might not be paralleled by larger resources—in particular lest, as new factories and the

like added to local services and local expenditure, these might bring burdens without corresponding revenue.

There was another argument on the other side for the proposals—for any reform intended to throw a larger share of local expenditure on state resources. In modern communities, taxation is more and more according to means. Its ideal expression is the income tax. By throwing a larger proportion of the local requirements on state funds, a larger measure could be obtained of taxation according to means, since national taxation was much more expressly based on this principle than was local taxation, and lent itself much more readily to it.

The government considered that the needs of the time and a more equitable spread of burdens could be obtained without any radical change in the system of local taxation. What it did was to remove from productive industries a large proportion of the local burden now cast upon them. In future, instead of paying local taxes on the full rateable value as now, they will pay only on one-fourth of this value (and this one-fourth will become the new rateable value for these industries). This relief is restricted to productive industry, so that, for instance, if in one concern there are premises and plant, some of which are for production and some for distribution, the reduction will be made only for the former. The relief is extended to railways, docks, and canals, but only on condition that it is passed on by way of reduced charges on freight traffic—in the case of railways, on specified agricultural, coal, and iron traffic.

Claims were made that any relief should be extended to distribution as well as to production. Both, it was argued, were necessary for production in its broadest sense. On the other side, it could be contended that, apart from the fact that it is upon productive industry, in the narrower sense, that post-war depression has fallen with force, the real property of distribution was usually small when compared with that of production—that, given productive and distributive businesses with about the same turnover and about the same profits, the necessary real property of the former would be likely to be much greater

than that of the latter, and it is upon real property that local taxation is levied. Therefore, on merits, it was contended, distribution had nothing like the same case for relief as production.

Agriculture was treated specially, as it had been in the past. It was now relieved of the remaining fourth, so that in future rates will not be paid on agricultural land and buildings. Rates will continue to be paid on the farm house and on the cottages of agricultural workers.

VI. NEW RELATIONS OF NATIONAL AND LOCAL FINANCES

I have already stated that the money required to make good the loss from derating is to be provided from the national exchequer. A special tax was put on petrol to raise additional money, though it would be a mistake to regard this tax as in any way earmarked for the needs of local authorities. It is but one means of adding to the central pool fed by taxation, and it is from that pool that the local grants will be drawn. The monies for that pool are levied on a much wider basis, and more according to means, than would be possible for a local body.

There is nothing new in the collection by the state of monies for local authorities. It has already been done to some extent in this country. It is a common practice in European countries; for instance, the additional centimes in France and the additions which are now so much a source of controversy in Germany. There is a difference of principle between the case where (a) an addition for local purposes is made to a state tax and the addition is levied expressly on the locality, and that where (b) the sum provided for local purposes is levied equally over the whole country. The changes in the recent act follow the latter course. As the community becomes more closely threaded by strands of common interest, and local areas become less and less self-contained, increasing difficulties are likely to be met in levying strictly local taxation on an equitable basis, equitable between districts as well as between persons, so far as it is intended to raise money according to means.

It would be much too early to say that these difficulties cannot be overcome, but no wholly satisfactory solution has yet been devised, apart from a state levy. How far state levy and collection are likely to endanger local autonomy (which, even apart from its own importance, is the admitted school of democracy) will depend in some measure upon the methods and conditions of distribution, and these I shall proceed to describe.

To preserve local autonomy is only one of the objects of the new method of distribution. It leaps much further in intention, and seeks to secure that income shall be more fairly divided between local authorities. The problem of the distribution of wealth presses on local authorities even as on citizens. Some of our districts have many times the wealth of others, judged by rateable value per head. As already mentioned, one of the most troublesome problems is that of the "distressed area," with low rateable value per head, large need for social services, and high rates. There has been persistent clamor for assistance. Something has been done, but, it has been felt, not enough.

One way out of the difficulty may be to merge the "distressed area" in a larger local government unit for all purposes. But local particularism may block the way; nor, indeed, is a solution by any means always possible along this line. Another mode of relief is to spread some of the local charges over larger areas; and, as already indicated, this is a course adopted in the new act for poor relief and for roads. But there is more.

Before describing the new scheme of distribution it is necessary to give some account of the grants which have hitherto been made by the state. Some of these, with a history of experiment behind them, are made on a basis which has no relation to the expenditure of the several local authorities. Others are made to each local authority as a percentage of its approved expenditure on specified services. The following figures of the expenditure of local authorities for the year 1926-27 will indicate the measure of these grants:

Total expenditure (excluding that out of loans,
but including that on trading undertakings) . . £402 millions

Total expenditure met out of rates and grants (the rest being met out of charges such as for water, electricity, and gas, income from property, etc.)	£246 millions
Met out of local taxation (rates)	£159 millions
Met out of grants	£ 87 millions

The new proposals do not change the grants made for education or for police, or the major portion of the grants made for roads. These will continue to be made on a percentage basis, generally fifty per cent of the net expenditure. Most of the other grants are to be merged in one pool with the money which has to be found by the state to make good the loss to local funds from derating. For the year 1928-29 (called the standard year), it is estimated in round figures that the loss from derating would have amounted to £24 millions and the grants to be discontinued to £16.5 millions, making £40.5 millions in all.

The discontinued grants include not only those hitherto made without reference to expenditure, but also those on a percentage basis for maternity and child welfare, treatment of tuberculosis and venereal diseases, the welfare of the blind, and the care of the mentally defective. These percentage grants amount to about £4 millions. There are also included certain of the grants, estimated at £3 millions, hitherto paid for maintenance of roads out of the road fund. The other grants amount to about £13.2 millions, and include about £4.7 millions in respect of the relief from rates already accorded to agriculture; though part of this total is already allocated to police and education, and the amount available for the pool will be £9.4 millions. This makes the total estimate of all discontinued grants the already mentioned figure of £16.5 millions.

The general exchequer contribution (the general pool of money to be distributed to local authorities) is to be made up of the loss from derating and from discontinued grants in the standard year, 1928-29, augmented by a special grant of new money. For each of the first three years, this new money will be a sum of £5 millions, part of it taken from the road fund. Toward the close of this time, Parliament will fix the amount anew for

the succeeding four years, and thereafter for each period of five years. The part of the general exchequer contribution for loss from derating and from discontinued grants (estimated at £24 millions and £16.5 millions respectively) is stabilized. Any change in the total of state money will be by way of increasing (or diminishing, which is unlikely) the "new money." There is, however, this condition in the act, that the total general exchequer contribution is never to form a smaller proportion of the total expenditure of local authorities met out of rates and that contribution than it does when the scheme first comes into force.

The local authorities contended that the new money should be more, but the government considered that the sum was adequate. It will serve in part to meet increases of expenditure during the grant period. For the scheme of the act is that the amount of money to be distributed to each authority shall be fixed for periods of five years. The first two periods are exceptions, being three and four years respectively, partly because of some concessions made to local authorities during the progress of the bill, but also in order that the years of the revision of grant may follow immediately the years of census (which in future is to be taken every five, in place of every ten, years). It will be observed that the new scheme brings the country appreciably nearer the position where, out of the total expenditure of local authorities which has to be met from taxation of one kind or another, one-half comes from central funds and one-half from local.

It is in the matter of distribution that the act contains some of its most interesting provisions. An attempt is made to smooth down the inequalities which arise from the distribution of rateable value and of local necessities. Grants are divided according to need. For this purpose a formula of distribution has been devised. It is a little complicated, and it would take too much space to set it out in all of its details. Distribution is to be according to population, but population weighted by factors which are deemed to indicate the probable burden on the district of providing the local services and the need of

help in bearing the burden. These factors are: (1) the taxable wealth of the district, measured by rateable value per head; (2) the proportion of children under five years of age to the total population of the area; (3) unemployment, measured by the proportion of unemployed insured men plus ten per cent of the unemployed insured women to the total population; and (4) for the counties (but not the county boroughs or London), density of population, measured by the population per mile of public roads, and so adjusted as to give weight to high and to low density.

The grants will be distributed according to the formula to each county council and county borough council. The county borough council will be the sole local authority for its district. In counties, however, there will also be county district councils, i.e., town councils, urban district councils, and rural district councils. The way in which the grant is divided between the county council and the county district councils is this. The amount to be allotted for each county is to be determined according to the formula. To each county district council will be paid a fixed sum per head of population, without any weighting. The difference will then be paid to the county council in aid of its expenditure. The individual ratepayer will, therefore, receive the benefit from the application of the formula in that part of his total rate (or tax) which represents his share of the payments for the requirements of his county council.

The fixed sums to be paid to the county district councils have been determined in this manner. The total part of the general exchequer contribution (the general grant pool) to be distributed to all county councils (London excepted) is divided by the population of the counties. One-half of the resultant amount is the uniform sum per head which is to be paid to the urban councils (town councils and urban district councils); the uniform sum is estimated at twelve shillings and six pence per head for the first period of the grant. For rural areas, some of the services which in an urban area would be done by, and at the charge of, the urban council, are performed by, and at the

charge of, the county council. Therefore the amount of the grant per head to be paid to the rural district council has to be less than to an urban council. It has been fixed at one-fifth of the share of the urban council, i.e., an estimated uniform sum of two shillings and six pence per head of population.

The new dispensation will not be reached in one flight. The journey will be taken in stages, thus: (1) for each of the first seven years, seventy-five per cent of that part of the general exchequer contribution which is in place of the loss for derating and from discontinued grants (estimated at £40.5 millions) will be distributed in proportion to this loss for each district, as shown by the figures for the standard year 1928-29, the remainder of the general exchequer contribution being distributed on the formula; (2) for each of the next five years, the seventy-five per cent distributed according to loss will be reduced to fifty per cent; (3) for each of the following five years, the proportion will be reduced to twenty-five per cent; (4) afterwards, the whole is to be distributed on the formula.

The act contains a number of guarantees for the assurance of local authorities, some of them inserted after negotiations with the associations representative of the authorities, who were abundantly consulted. The following may be mentioned: (1) each county council and county borough council is guaranteed a gain of at least one shilling per head of population over and above its loss in rates and grants in the standard year; (2) each district is given a limited guarantee against a rate higher, by reason of the changes brought about by the scheme, than that in the standard year 1928-29; (3) as already stated, the total general exchequer contribution in any future year is not to be less, in proportion to the total net expenditure of local authorities from rates and the general exchequer contribution, than it is in the beginning; (4) it is expressly provided that if Parliament imposes new duties on local authorities the scheme is not intended to include any grants for those duties; and lastly, (5) the scheme is to be investigated before the end of seven years and a report made to Parliament on it. The system will have been only in partial operation during this

period, but sufficient experience should have been gained to indicate how it is likely to work when in full operation.¹

VII. GENERAL IMPORT OF THE NEW LAW

Any extensive reform of this kind was bound to encounter criticism—not mere party sharp-shooting, but genuine doubts. Many guardians had given years of devoted service to their boards, had become attached to them, and saw nothing but calamity in their passing. The general local authorities hesitated, fearing above all how their purses would ultimately fare, the more so because their previous experience with stabilized grants had not been happy. Percentage grants had for them at least this automatic virtue, that they were assured a grant for every pound of approved expenditure; and they expected that expenditure would go on growing. Further, under the pressure of social needs and persistent advocacy, in recent years Parliament had placed many new duties on local authorities, and, where these were distinctly of national importance, had definitely entered into partnership with the local authorities, paying a part of the cost. The fear of the local authorities that new services of this kind might be imposed, without any corresponding grant, was met, so far as it could be, in the act.

Another group of critics clung to the percentage system, not out of tenderness for the interests of local authorities, but because it was an excellent stimulus to local authorities to induce them to undertake and to develop services entrusted to them. They feared that, if this bait were removed, the slack local authorities would lag woefully behind. It is a criticism likely to weigh heavily with those whose interest is more in particular services, such as maternity and child welfare, than in the general work of local authorities and in their autonomy.

This observation raises the question of how the scheme affects the relations between the local authorities and the central departments of state, especially the ministry of health—relations

¹ It may be added that there are special adaptations for London, because of the exceptional conditions, with duties divided between the London County Council and the metropolitan borough councils.

always intimate in Britain. One of the chief objections raised to the system of percentage grants has been that they tend toward detailed control of local affairs. Financial aid cannot but be bought at the price of some loss of local autonomy; the control may become national when pound is given for pound. Another, and to some minds more important, objection is that the system may tend to dull local initiative. Grants can be obtained only on approved expenditure; local authorities naturally look to the central department to say what is to be approved expenditure; local initiative may, in consequence, go to sleep. It has been said also that percentage grants, with their control of detail, tend to immerse the central departments in the smaller things, to make them lose sight of the wood for the trees, and that, relieved of this detail, they will tend to cultivate the larger issues of affairs. Much, manifestly, must depend, in judging the merits of percentage grants, on the need for firm central control of general policy and administration and for direct stimulation; and these needs may differ materially for different services.

A large measure of control is left under the new act, on paper, with the central department. First, there are provisions under which, if the local authority fails to carry out essential duties of public health, it may be superseded for those duties at the instance of the minister of health (who is, of course, subject to Parliament). These provisions do but reproduce in better form what was already contained in the law. Secondly, the minister is empowered to reduce the grant payable to a local authority if it fails to carry out essential health duties or if it is guilty of gross extravagance. If he uses this power in any case, however, he has to make a special report to Parliament.

Objection was raised in some quarters to the power to withhold grants by reason of extravagance, on the ground that it contravenes the principle that a local authority should be subject only to its own electors so long as it draws only on local rates. On the other hand, the total contribution of the state will in a measure depend upon the expenditure out of rates, and

it is noteworthy that the power obtained, and in a few cases used, entirely to supersede a poor law authority by nominated commissioners for misuse of their functions is surrendered and reliance placed entirely on the powers contained in the new act.

Lest these references to penal action give a false impression, let me hasten to add that the general relations between the central departments and the local authorities are most cordial, that all recognize that they are partners in a common cause, and that the central departments appreciate that their principal task is to help the local authorities in the arduous duties placed upon them.

Such, in brief, are the changes wrought by the Local Government Act passed this year. It is at any rate a bold scheme, whatever be the differences of opinion on its merits. But there is nothing revolutionary about it. The act, in the main, continues the developments of the last hundred years, and some familiarity with that history is necessary for its proper understanding.

Consolidation of services; larger units of charge and of administration; larger contributions from the state toward local expenditure—these have all been enacted before and are now merely extended. The newest elements in the reforms are the relief from local taxation afforded to productive industry and the endeavor to distribute grants more in accordance with local needs; but, as to the former, some modification of local taxation has long been felt to be needed, though there have been, and still are, differences of opinion how best it may be effected; and as to the latter, some means of redressing inequalities have long been held desirable, though not hitherto attempted on a comprehensive scale.

The act makes big changes in the topography of local government, and it is not often that so many and great changes are effected in one measure. But the broad outlines of local government will remain much the same. The operation of the act will be watched with interest and care, not least by the associations of local authorities, who may be trusted to press with

weight any claims which may emerge in their favor. The changing conditions of modern life, which now transform as much in a generation as formerly in a century, call for periodic adaptation. Without it, waste must ensue. At the same time, it is hard to say with assurance, in the complicated maze of modern conditions, what will be the lasting effect of reforms. A spirit of empiricism is required for efficient government; and that, of a certainty, is possessed by the British people in abundant measure.

AMERICAN GOVERNMENT AND POLITICS

The Bearing of *Myers v. United States* upon the Independence of Federal Administrative Tribunals. The rapid development of administrative law during this century has meant a multiplication of administrative tribunals.¹ The functions of these bodies vary widely. Some have regulatory powers, others only fact-finding authority. The Interstate Commerce Commission may fix rates²; the Tariff Commission may only investigate differences in costs of production.³

In all such cases, however, there is fundamentally the same motivation behind their creation. The complexity, technicality, constant fluctuations, and expanding scope of the problems that confront Congress have compelled it to devolve some of its authority upon other bodies,⁴ and in some cases to set up agencies for the collection of data as a basis for decision. These very same factors have made our traditional trial courts unsuitable agencies for the exercise of powers thus devolved,⁵ and politically controlled bureaus unfit for the investigation of politically significant facts.⁶ Congress, therefore, has set up specialized bodies, which are to be manned by experts in particular fields, supplied with elaborate means of research, and authorized to act upon the best obtainable information and opinion. The purpose is thus clearly to cause scientific methods and expert judgment to be brought to bear to the maximum extent possible.

¹ Among these are the Civil Service Commission, the Interstate Commerce Commission, the Federal Reserve Board, the Federal Trade Commission, the United States Shipping Board, the United States Tariff Commission, the Federal Power Commission, the Inland Waterways Corporation, and the Federal Radio Commission

² See U. S. Comp. St. (1918), §8563; *ibid.* (1925), §8563.

³ See 42 Stat. at L. 858.

⁴ Cf. James Hart, *Ordinance-Making Powers of the President*, 265-275.

⁵ Because the ordinary trial judge and jury do not have the technical knowledge, and, since these courts have "general jurisdiction" and lack fact-finding staffs, they are not equipped to acquire such technical knowledge.

⁶ For support of this statement, see *Hearings Before the Select Committee on Investigation of the Tariff Commission*, U. S. Senate, 69th Cong., 1st. Sess. (1926), espec. Pt. I, 66-67; Pt. III, 361; Pt. IV, 775-776. The tariff act of 1922 created a relationship between the President and the Commission which made it possible for him to regard it as a mere bureau. The results are set forth in the excellent public document cited.

It is submitted that for this purpose to be carried out—for the duties of these tribunals to be performed under the influence of the “judicial habit of thought”⁷—it is essential that the members be guaranteed independence in the exercise of their personal judgment, uninfluenced by direct pressure from political superiors or special interests. And it is a matter of common experience that independence of tenure is a prerequisite of independence of judgment.⁸

It might be that this independence of tenure could be guaranteed by the development upon the part of the President of self-restraint in the exercise of legally permissible discretion. Examples of the ability of constitutional *mores* to mold to a dominant purpose the rules of constitutional law are scattered through the history of modern constitutional government.⁹ In the case of certain commissions, notably the Interstate Commerce Commission, there appears to have been a minimum of political interference in the past. If this cannot be said

⁷ W. A. Robson, *Justice and Administrative Law*, emphasizes the importance of the “judicial mind” in the exercise of quasi-judicial functions. See the present writer’s review of Robson in this *Review*, vol. 22, p. 987. What is the judicial “habit of thought?” It seems to the writer that Mr. Robson speaks too glibly of “impartiality.” Judicial officers are human beings who are not, and cannot become, entirely free from all opinions and prepossessions. Jurors are the only persons who possess this dubious virtue. The judicial habit of thought means rather a *conscious desire* to be “impartial” *according to one’s lights*, an attitude of respect for expert opinion and cumulative experience, and a sense of detachment from the strife of conflicting interests. At its very best, it includes a willingness to reexamine, upon occasion, one’s own tacit assumptions, which takes us away from the “red tape” psychology of bureaucracy.

⁸ Recognition of this common experience is seen in the English and American (federal) provisions for tenure of judges during good behavior, and in attempts on the part of Congress to limit the President’s power of removal of officers and commissioners exercising quasi-judicial functions. For example, by 42 Stat. at L. 23, 24, Congress denied to the President all power to remove the comptroller-general. See L. Rogers, *The American Senate*, Appendix A, for other statutory provisions. No doubt some of these attempted restrictions were based on other motives.

⁹ The Senate has in all save a few cases refrained from interfering with cabinet appointments. The French executive has not arbitrarily removed a judicial member of the *Conseil d’État* since 1879 (Sait, *Government and Politics of France*, 388). Bureau chiefs in several of our federal executive departments have a practical stability of tenure. See Macmahon, “Bureau Chiefs in the National Administration of the United States,” in this *Review*, Aug. and Nov., 1926. Professor Robson assures us that in England political interference with quasi-judicial functions, even those entrusted to the ordinary departments, is a “bogey” (*Justice and Administrative Law*, 282–288). Presidents seem gener-

of the Tariff Commission under Presidents Harding and Coolidge,¹⁰ the fault lies primarily with Congress, which delegated final responsibility to the President in the matter of the flexible tariff,¹¹ and which imposed upon the Commission the duty of finding "facts" which are non-existent.¹² However this may be, in a matter so essential for the performance of the proper tasks of administrative tribunals in general, it seems evident that the safest course is to add the sanction of law to the guarantee by practice of independence of tenure. Specifically, this means that it is politically inexpedient to allow the President an arbitrary and illimitable power to remove at pleasure the members of these commissions.¹³

ally to have respected the intent of Congress and to have refrained from overt interference with the Interstate Commerce Commission. These examples are taken more or less at random, but they show the importance of constitutional *mores* as at times a restraining influence in modern constitutional government.

¹⁰ See *Hearings* cited in note 6 above.

¹¹ Cf. the wording of the tariff act of 1922 (42 Stat. at L. 858) with President Harding's letter to Mr. Culbertson (*Hearings*, Part III, 361) and President Coolidge's interview with Mr. Lewis (*Hearings*, Part IV, 775).

¹² See T. W. Page, *Making the Tariff in the United States*; also Taussig's article reprinted in the *Hearings* cited above, Part I, 30 ff.

¹³ Through most of its history, to be sure, the federal government has been characterized by a centralized administration, with the President at the top as administrator-in-chief. The states in recent years have shown a marked tendency to imitate this feature. Those persons who have advocated enlargement of the governor's powers have held up the federal government as a model. But that government, under the new conditions of the twentieth century, has itself shown a tendency in the other direction, toward the creation of independent or semi-independent quasi-judicial, fact-finding, and even business, establishments. Examples, in order, are the Interstate Commerce Commission, the Tariff Commission, and the Shipping Board. This paper holds the tendency to be sound, within limits at least, and sets forth below a theory of the removal power which will allow independence of tenure to these boards and commissions. But it is to be noted at this point that the question of independence of tenure is broader than is indicated by the title of the paper, and that the theory of the removal power hereinafter set forth makes it possible for Congress to protect also the comptroller-general, and even the heads of such departments as are created to carry into execution its own powers rather than the independent, political, constitutional powers of the President. The time may come when Congress will see fit to make the Post Office Department and the Department of Agriculture and similar services independent establishments.

Whether any such officers are "inferior" or not, in practice they are so important that it is wise to leave their appointment to the President. In that event, according to the Myers *dicta*, Congress cannot restrict the President's power to remove them. If these dicta be accepted, Congress can regulate the tenure

The question at once arises: Does the Myers case¹⁴ establish beyond doubt that he has such power? The majority opinion in that case clearly claims that he has an illimitable power to remove all executive officers whom he appoints, at least with the consent of the Senate, and specifically includes the members of these bodies in that category.¹⁵ Does that necessarily settle the matter?

of office only of "inferior" officers, and only of these by taking the power to appoint them from the President. It is not likely that Congress will vest the appointment of interstate commerce commissioners in the heads of departments, though it might see fit to solve the problem of the comptroller-general by vesting his appointment in the Supreme Court. It could then control his removal, as is pointed out by Mr. Langeluttig in a recent article. It might even vest other appointments in the courts, though this would be a departure upon which Congress might not wish to embark upon a large scale. Under our theory, such expedients would be unnecessary.

Another phase of independence of tenure is, of course, related to the merit system. But even according to the *dicta* of the Chief Justice in the Myers case, this can be satisfactorily taken care of by vesting the appointment of officers in the classified services in department heads. Congress can then regulate tenure. Our theory would make this possible, however, even if there were a permanent under-secretary appointed by the President himself.

¹⁴ 272 U.S. 52. The reader will find not only the opinion of the Court, but the briefs and arguments of counsel on re-argument, in Sen. Doc. No. 174, 69th Cong., 2nd Sess.

¹⁵ The Chief Justice, in his opinion, said in part: "The imperative reasons requiring an unrestricted power to remove the most important of his subordinates in their most important duties must, therefore, control the interpretation of the Constitution as to all appointed by him. . . . There may be duties of a quasi-judicial character imposed on executive officers and members of executive tribunals whose decisions after hearing affect interests of individuals, the discharge of which the President cannot in a particular case properly influence or control. But even in such a case he may consider the decision after its rendition a reason for removing the officer. . . . The Court also has recognized in the Perkins case that Congress in committing the appointment of such inferior officers to the heads of departments may prescribe incidental regulations controlling and restricting the latter in the exercise of the power of removal. . . . Congress is only given power to provide for appointments and removals of inferior officers after it has vested, and on the condition it does vest, their appointment in other authority than the President, with the Senate's consent. . . . Whether the action of Congress in removing the necessity for the advice and consent of the Senate and putting the power of appointment in the President alone would make his power of removal in such case any more subject to congressional limitation than before is a question this court did not decide in the Perkins case. Under the reasoning upon which the legislative decision of 1789 was put, it might be difficult to avoid a negative answer, but it is not before us and we do not decide it." This last is obviously a *dictum*, so that it is admittedly

This question can be answered intelligently only upon the basis of a clear understanding of the principle of *stare decisis*.¹⁶ Under that principle, historically and realistically considered, the word patterns of the Chief Justice are not *per se* rules of law. Neither are his premises to be so regarded; for the Court often in later cases so narrows the application of those premises as implicitly, if not explicitly, to repudiate them in their original form.

This does not mean that the bare judgment is all that is left. In the Myers case the judgment was that the Myers estate could not recover the remainder of the ex-postmaster's salary.¹⁷ If we stopped there, we could never apply *stare decisis*; for the event never repeats itself. Generalization of some sort becomes necessary. We hold that we do not have to accept the generalization which the Chief Justice deduced from premises which he had first to read into the Constitution before he could take them out again.¹⁸ Generalization rather involves

possible under the Myers *opinion* for Congress to regulate presidential removals, provided the Senate is willing to forego its check upon appointments. This, however, is hardly a satisfactory solution.

¹⁶ The position here taken is but an application of the approach to *stare decisis* outlined by Professor Oliphant in his presidential address before the Association of American Law Schools, December, 1927. See *American Law School Review*, vol. 6, No. 5.

¹⁷ Briefly, the facts of the case were: One Myers was appointed postmaster (first class) at Portland, Oregon, under a statute of 1876, which provides: "Postmasters of the first, second, and third classes shall be appointed and may be removed by the President by and with the advice and consent of the Senate, and shall hold their offices for four years unless sooner removed or suspended according to law." Less than three years later President Wilson removed Myers over his protest. By not appointing a successor to Myers during the remainder of the term, the President kept the Senate from having an opportunity to consent to his removal by consenting to the appointment of a successor. Myers filed suit in the Court of Claims for the remainder of his salary, and after his death the suit was prosecuted by his administratrix. The Court of Claims gave judgment against Myers, holding him guilty of *laches*. The Supreme Court, on appeal, held he was not guilty of *laches* and affirmed the judgment on the ground that Myers was properly removed, the statutory provision quoted above being unconstitutional. The point is, however, that that provision contained only one type of restriction upon the removal power, and hence the case is in point only with reference to that type.

¹⁸ Professor W. W. Cook compares this show of "logic" as the supposedly sole basis of decision to the sleight-of-hand trick of extracting rabbits from a hat. Of course, the judge, unlike Houdini, is not always conscious of the step by which he puts the rabbits into the hat. Once they are in, syllogistic logic gives us an "irrefutable" answer.

the formulation of a series of propositions, each broader than the rest, yet each a generalized description of the judgment in the light of the facts; and then the selection of one of these propositions as the "rule" which, it is hoped or predicted,¹⁹ will be a description of future cases. Otherwise, we get away from *stare decisis* to what Professor Oliphant has called *stare dictis*.

We have been able to elaborate eight or ten such generalized descriptions of the Myers judgment. These we may merely indicate by asking two questions: (1) To what class of officers does this decision apply—to first-class postmasters only, or to all postmasters, or to all executive officers whom the President appoints, or to all executive officers of the United States? (2) With reference to the selected class, what statutory limitations does the decision invalidate—those that require senatorial consent to removals only, or all which require participation or initiation by Congress, or all which seek in any way to regulate the conditions of tenure of office? Of the resulting series of propositions, some are unlikely to be accepted, while others would lead to undesirable consequences.²⁰ We accept as the rule for the Myers case which we should like to see the basis of future decisions, the principle that Congress may enact no laws which attempt to draw to itself or one of its branches the executive act of removal or participation therein.²¹

¹⁹ If we are *arguing* the case, as in this article, we may state what we *hope* the rule will become. If we are asked what the law "is," we *predict* what the court is apt to do in the future cases.

²⁰ For example, there seems no reason to suppose that first-class postmasters, or even postmasters in general, form a special class *for the purpose of the power of removal*. Again, the present writer has written this paper to urge that the conclusion that Congress may not in any way limit the President's power of removal is unnecessary, and leads to undesirable consequences.

²¹ This is precisely what the statutory provision which the Court held invalid did. Hence, on a strict application of *stare decisis*, this is all that the decision necessarily covers. See note 17 above. This was admitted in the brief of Solicitor-General Beck (see Sen. Doc. No. 174, 69th Cong., 2d Sess., 69-71). Speaking of the question "in its narrower aspects," he said: "*In limine*, I stress the point that it may not be necessary in the instant case to determine the broader aspects of this important question, for the statute under consideration can be held unconstitutional without assuming the absolute power of the President to remove any executive officer. . . . Hitherto it has been assumed in the discussion of this question that there is no middle ground between the *absolute* power of the President to remove and the *absolute* power of the Congress to control the right of removal. . . . Whether this middle ground exists need not be decided in this case, for the law now under consideration simply asserts

We may now imagine ourselves in the position of the Court, faced by the Myers decision as thus interpreted, and seek to formulate a constitutional theory of the removal power which will be consistent with that decision as well as with the Constitution, and which will at the same time lead to the consequences which we have outlined as desirable.²² In justification of this procedure, we refer our readers to that enlightened passage in Mr. Justice Holmes' *Path of the Law*, where he says that while the language of judicial decisions is mainly the language of logic, behind the logical form lies a judgment of expediency which is the very root and nerve of the whole proceeding; and that it is the duty of judges to recognize this fact and to proceed upon it.²³ An approach thus sanctioned can hardly be juristic treason.

But if ever there was a problem in dealing with which we are free to make this approach, it is that of the power of removal. On this subject the Constitution itself is not even ambiguous. It resembles the Sphinx rather than the Oracle of Apollo. Before the Myers decision, Professor Lindsay Rogers well remarked that the Court would have to determine what the Constitution would have said on such a subject if it had not been silent.²⁴ Neither the Constitution, nor logic, nor history gives us an inescapable answer.²⁵ This being so, it would seem that not even the Chief Justice could claim that his theory is the "only possible logical conclusion" that can be drawn.²⁶ It would further seem that we are forced to make a choice between competing

an unqualified right of the Senate to participate in the executive function of removal. Such a law is not the declaration of a legislative policy. It is a redistribution of the powers of government." This paper attempts to take the "middle ground" suggested by Mr. Beck.

²² Namely, guarantee by law of independence of tenure of members of federal quasi-judicial commissions.

²³ *Collected Legal Papers*, 180-184.

²⁴ *The American Senate*, 35.

²⁵ This is seen in the fact that the Chief Justice on the one hand, in his opinion for the Court, and Mr. Justice McReynolds and Mr. Justice Brandeis, in their dissenting opinions, as well as Professor Corwin, on the other hand, draw opposite conclusions from an examination of the Constitution, logic, and history. Professor Corwin's views are set forth in his little volume entitled *The President's Removal Power*, in the National Municipal League Monograph Series, 1927. The present paper has not attempted a reconsideration of the historical material.

²⁶ It will be noted that this is not claimed by the present paper concerning the theory of the removal power hereinafter set forth.

theories, and that it is our duty to choose that one which will lead to the most desirable consequences.²⁷

Let us seek to avoid certain pitfalls into which the Chief Justice fell. Maclay quotes Ellsworth as having said that the power of removal is a "tree" on the President's "half-acre" of executive power.²⁸ In effect, the Chief Justice concluded that for Congress to cut a single limb from this tree of removal would be for it to trespass upon the executive power.²⁹ We should strive, however, to avoid the fallacy of reifying our concepts.³⁰ By treating the power of removal as if it were an entity, we endow it with an absoluteness not necessarily to be inferred from the Constitution. We are thus led to neglect equally relevant clauses in Article I. If our constitutional theory has any special virtue as a piece of construction, it is that it seeks to read together all relevant clauses of the Constitution. In his zeal for "the executive power," the Chief Justice neglected this fundamental rule of construction.³¹

Our constitutional theory can best be presented by drawing some fundamental distinctions. The first is between the *act* of removing and the enactment of *laws* governing the tenure of office.³² The power to perform the act of removing is a correlative of the administrative relationship of superior to inferior. Where the Constitution and laws place the one, the other is impliedly involved. The power of appointment as such is conclusive evidence of the establishment of the administrative relationship only in the absence of other such evidence.³³

²⁷ See note 23 above.

²⁸ Maclay's *Journal*, 114.

²⁹ Thus the Chief Justice says: "Mr. Madison insisted that Article II by vesting the executive power in the President was intended to grant to him the power of appointment and removal of executive officers *except as thereafter expressly provided in that article.*" (Italics mine.)

³⁰ Cf. Cunningham, *Textbook of Logic*, 403.

³¹ See Willoughby on the Constitution (2nd ed., 1929), §40.

³² Cf. Senator Pepper's oral argument, Senate Document cited in note 21, p. 172.

³³ The contention here made is that, when writers say that the power of removal is an incident of the power of appointment, they really mean to say: that it is the correlative of the power of administrative supervision. Otherwise, they are driven, if they seek to uphold the power of removal as residing in the President alone, to resort to a forced distinction between the power of appointment and the power of advising and consenting to appointment, and to deduce a presidential power of removal from the former only. The really significant fact in this situation is that the power of removal is deducible from a combination of clauses which, taken together, make him the administrative superior. The power of appointment is only one of these. See the text below.

But under the separation of powers, the power to perform the act of removing officers performing executive functions can, in the absence of other evidence in the Constitution itself, be vested only in executive officers. For the power to perform this act is *prima facie* an executive act.³⁴ On the other hand, the power to enact laws governing the tenure of office is legislative in character, and is so clearly and directly related to the legislative policy involved in the creation of the office that, in the absence of contrary evidence in the Constitution, such legislative enactments have a presumptive validity.³⁵

A second distinction relates to the purposes for which offices may

³⁴ It follows from the separation of powers that Congress has considerable power to vest duties in executive and judicial officers, but that it cannot vest the performance of an act held to be executive in another department except by express authorization of the Constitution. It may be argued that if the act of removal is "executive" in character, then the opening sentence of Article II vests the power to perform it in the President. Or, from another angle, it may be argued that the net result of our theory is to allow Congress to vest executive power in officers or boards other than the President and not even responsible to him. Is not this, after all, inconsistent with the opening sentence of Article II? The answer would be affirmative if we took that sentence as a categorical absolute and apart from the whole context. But if we did that, the result would be inconsistent with a similar absolute interpretation of the "necessary and proper" clause. We are thus forced to a choice. Again, a still more absolute interpretation of the opening sentence of Article II, if we may be pardoned the bull, would enable the President to perform personally (say) "executive" authority delegated to the Interstate Commerce Commission by law. Not even the Chief Justice holds this view. We feel it a more reasonable view to hold that the said opening sentence vests the thereafter named executive powers in the President. Besides these constitutionally vested executive prerogatives, there are executive functions created by law and vested by law directly in officers who are also purely creatures of law. The authority to regulate even the tenure of such officers is found in the necessary and proper clause. This phase of executive authority is in its nature a product of legislation. In this respect the separation of powers means only that Congress is confined to making regulations, and may not take to itself the actual performance of administrative tasks; and that the courts, being confined to hearing cases and controversies, may not be given such functions by law, except as provided by the Constitution. It is only as read in connection with the opening sentences of Articles I and III that the opening sentence of Article II may be said to refer in any way to the executive function in general. That function comes into being only as created by law; but by the rule *expressio unius est exclusio alterius* the law-maker cannot take the function to itself. All of which merely means that the separation of powers is not the perfectly simple triangular arrangement which some theorists try to read into the Constitution.

³⁵ This is clear from Article I of the Constitution. See text below.

be created under the Constitution. Some are set up as "necessary and proper" means for carrying into execution the enumerated powers of Congress, others as "necessary and proper" means for carrying into execution independent political powers of the President.³⁶ The significance of this distinction becomes clear only when we recall the Anglo-American conception of executive power as embodied in the Constitution. According to that conception, the executive power falls into two distinct classes: (1) certain political powers of a discretionary nature vested by our Constitution directly in the President, and to be exercised by him upon his own initiative and without interference by Congress; (2) the executive function in the general sense of administration of the laws, a function which the President cannot himself perform in full, and which by its very nature is relative to the laws and involves only such discretion as is expressed or implied in the laws themselves.³⁷ Accordingly, some of the offices created by Congress are created to aid the President in the performance of his independent executive powers, and others for the purpose of establishing agencies to administer, in accordance with the second class of executive power, the laws enacted under the enumerated powers of Congress. As we shall see, what Congress may do in creating offices is conditioned by this distinction.

Upon these fundamental distinctions our theory of removal is based. The framers could have given the President the power of removal in explicit language. That they did not do so indicates that that power is to be inferred from the power of administrative supervision as its correlative. What can we infer from the Constitution on the power of administrative supervision? In answering this question we must be careful to read together all relevant clauses of the instrument, and avoid looking solely at Article II. By so doing, we see that the framers did not mean to give the President an absolute and illimitable power of administrative supervision over all officers of the executive department, or even over all whom he appoints, but that they left considerable scope for statutory regulation of the matter.

It is in this connection that our distinction between the purposes

³⁶ A careful reading of the "necessary and proper" clause shows that the laws to be passed under it fall into two classes: (1) those to carry out the aforementioned powers of Congress, and (2) those to carry out all other powers vested by the Constitution in the government, or any department or officer thereof. Clearly Congress has more leeway under (1) than under (2).

³⁷ Cf. note 34 above.

for which offices may be created becomes important. Over those principal offices established by Congress as "necessary and proper" means for the carrying out of the independent political powers which the Constitution vests directly and explicitly in the President, he has a power of removal that is absolute and illimitable.³⁸ For by reading together his power of appointing, perhaps his position as "the executive," and the enumerated presidential powers in question, we derive a resulting power of absolute administrative supervision relative to such officers. This gives us an absolute correlative power to remove them. Furthermore, for Congress to make such officers independent of the President would be for it to control him in the exercise of his independent powers. What it can do in creating these offices is limited by the primary fact that they are created as "necessary and proper" means for carrying out, not the enumerated powers of Congress, but those of the President. Such officers are the secretaries of state, war, and the navy, ambassadors, other public ministers, and perhaps others that the Court might place in the same category.³⁹

Other offices, however, are created as "necessary and proper" means for the execution of the laws enacted by Congress under its own enumerated powers of legislation. With reference to the removal of their incumbents, we have first to consider the situation which exists in the absence of legislation, and then we may take up the scope and limitations of the power of Congress to regulate such incumbents' tenure of office.

The Constitution may be taken to imply that, in the absence of clear legislative language to the contrary, the President has the power to remove all such officers whom he appoints. This is a resulting power inferred from his power of appointing, perhaps also his position as "the executive," *taken together with* his duty to see that the laws are faithfully executed. Read together, these clauses make him, conditionally, the administrative superior of all such officers, and hence give him the correlative power to remove them.

³⁸ Cf. note 36 above.

³⁹ The distinction seems clear, in general. There is left a "margin of doubt." This would be a disadvantage, were it not for counterbalancing advantages to be derived from the distinction. All broad distinctions leave a "margin of doubt." Are we to stop drawing them for that reason?

We may add that if a particular service were given both types of function, the President could still remove its head at pleasure. Otherwise, Congress could use this as a means of dominating the President, let us say, in foreign relations.

Why conditionally? Because by reading together the enumerated powers of Congress, its power to create offices and its power to pass all laws "necessary and proper" *for carrying into execution* its other powers, we find Congress to have a resulting power to regulate the conditions of tenure of such offices. These are as much a "part" of the office that is created as are the qualifications of office; while their regulation by law may be a "necessary and proper" means of making the office an effective medium for carrying into execution the legislative purpose.⁴⁰ Moreover, by enacting such laws Congress does not infringe upon any independent executive powers. Even if the opening sentence of Article II be taken as a grant of general executive power,⁴¹ there is no justification, in view of these relevant clauses in Article I, for reading into "the executive power" as such a power to defeat an express legislative purpose. For we have seen that, aside from specified political powers, the Anglo-American conception of executive power involves a power that is relative to the legislative will.

The better opinion, however, is that the opening sentence of Article II⁴² is meant merely to summarize and characterize the specific powers that follow; to designate the President as a "single" executive finally responsible for the exercise of the independent powers and duties granted him; and to make it clear that Congress may not vest the power to perform an act of an executive nature in the courts or take such power to itself, except as the Constitution may otherwise provide.⁴³

The only other clause of Article II which Congress might be thought

⁴⁰ There is no reason for ignoring these provisions of Article I and the inferences that may be drawn from them. In view of these possible inferences, it seems a sounder construction to avoid taking either horn of the dilemma and to work out, as this paper has tried to do, a "middle ground" theory which seeks to give due weight to both Articles I and II.

⁴¹ One of the most striking things about the opinion of the Court in the Myers case is the emphasis upon the theory that this sentence is a grant of general executive power. The Court here, so far as the writer knows, takes advanced ground upon this issue so long debated. (On the general issue, see Hart, *op. cit.*, 115-117, 192, 196, 211, 220 ff.) This is believed to be unfortunate. It leaves scope for too many deductions of presidential powers which might be unwise. One such deduction is made in the broad *dicta* of the Myers case.

⁴² "The executive power shall be vested in a President of the United States of America."

⁴³ That would amount to a reallocation of powers which the Constitution itself allocates. The exact definition of these powers is ultimately a judicial question.

to violate in this connection is that which makes it the duty of the President to see that the laws are faithfully executed. This is the only specific clause that is related to the second class of executive powers listed above, namely, the general administration of the laws. We have already pointed out that, according to the Anglo-American conception, executive power in this sense, though vested under our system in separate hands, must flow only in the channels prescribed by law.⁴⁴ The imposition in this clause of a duty upon the President by its very terms limits his power to the carrying out of the laws. It gives him no independent powers as against the laws.

The Constitution clearly provides for the establishment of other executive offices.⁴⁵ Where they are set up to execute congressional powers, Congress can fix their duties.⁴⁶ Only by distorting the faithful execution clause can we read into it any power to violate otherwise constitutional statutes which fix the tenure of such offices, which are direct agencies of Congress, created by it for the effectuation of its legislative purposes, and hence subject to its regulations in a way that the President, in the exercise of his independent political powers, is not. For the President to ignore such tenure of office acts on the theory that they are *ipso facto*⁴⁷ invalid is to violate his express duty.

Nor is Congress in such legislation infringing upon the President's resulting power of administrative supervision. We have already shown that this is an inferred power, and that by reading together Articles I and II we may infer only a conditional power of supervision over the officers under discussion. Only thus can we give full weight to the policy-forming powers of Congress as well as the powers of the President.

⁴⁴ Cf. Senator Pepper in Senate Document quoted in note 21, p. 173. Senator Pepper does not, however, make clear whether he is referring to the President's duty to obey the law or to the validity of the law when before the courts. The distinction is important. The Court in the Myers case did not pass upon the question whether the President is in duty bound to obey such a law. It merely passed upon the validity of the law relative to a private claim against the United States based upon it. The fact that the claim arose out of the President's disobedience to the law is a question for the House in bringing impeachment. We need not go into it here.

⁴⁵ Art. II, §2.

⁴⁶ Also their terms, the qualifications of their incumbents, and reasonable classifications for promotion. This the Myers opinion admits, but it holds the power of removal to be specially and peculiarly "executive."

⁴⁷ By *ipso facto* invalid, we mean invalid for the very reason that they limit the otherwise unlimited power of removal.

What about the claims of the Senate? We have seen that the power of removal is a correlative of the power of administrative supervision. The President's position of administrative superior, both in its conditional and in its absolute aspects, is inferred from several of his powers taken together. The Senate is related to only two of these powers,⁴⁸ those of appointing and treaty-making, and only by way of express exception. There is nothing, therefore, to indicate that the Senate has directly from the Constitution any claim to a share in administrative supervision, or in the correlative power of removal. This view is strengthened by the fact that the act of removal is an executive act, in which the Senate may not share. For the Senate is a legislative body which is made an executive council only in the case of the two express exceptions noted above.

It follows from the same reasoning that Congress may not by law draw to itself or to one of its branches participation in the executive act of removal.⁴⁹ It can, with reference to certain officers, regulate their tenure, but in so doing it may not violate the principle of the separation of powers; and if it does, no claim against the United States can be allowed under its act.⁵⁰ That is precisely what Congress had attempted to do in the act held invalid by *Myers v. United States*. That it may not do so, we hold to be the point decided by the case, the *dicta* of the Chief Justice to the contrary notwithstanding.

If our general theory be acceptable, it is clear that such a law as the act of 1876⁵¹ is not on all fours with the statutory requirement that officers whose offices are created as means for the execution of congressional powers may be removed for specified causes only, and only after notice and hearing, and upon grounds publicly set forth in writing; or even with the prescription that such officers shall hold for a stated period of years, unless meanwhile removed upon impeachment. Of these, it is admitted at once that the latter goes much further.

⁴⁸ We can arrive at this conclusion without difficulty because we have not inferred the power of removal from the power of appointment taken alone, but from several presidential powers considered together.

⁴⁹ See argument of Mr. Beck, cited in note 21 above.

⁵⁰ This, at least, seems clear from the *Myers* decision. Whether or not we should have so argued before that decision, we must accept this as settled by it. Our thesis is that this is all that the decision does settle, or all that it must necessarily be held to have settled. The rest is a matter of guessing future decisions. See below on that point.

⁵¹ That is, the one held invalid in the *Myers* decision.

But if our reasoning be accepted, it is permissible.⁵² The character and sense of responsibility of our presidents is such that even such a restriction as the former sort will prove helpful. While it leaves the final decision to the President, constitutional *mores* and public opinion could probably be depended upon to restrain him.

But the proof of the pudding is in the eating. What is the probability that the Court will narrow the premises of the Myers case, even though perhaps not explicitly doing so? There are several considerations which suggest that it will not. Here was a vexed question never before authoritatively passed upon. After most careful consideration, including a re-argument in which a distinguished lawyer from the Senate⁵³ represented the interests of that body as *amicus curiae*, the Court attempted to settle the broad question in a carefully and elaborately reasoned opinion to which six of the nine judges assented.⁵⁴ The reactions of the majority were distinctly favorable to the executive viewpoint.⁵⁵

There are, however, factors in the situation which lead us, if not to predict, at least to say that it is not improbable, that the brethren of the Chief Justice will refuse to follow him all the way in making his broad *dicta* the law of the land. The opinion was written by an ex-President. It is in no spirit of irreverence toward the Chief Justice, for whom our admiration is sincere, that we are constrained to suggest that he saw through executive-colored glasses. Our guess is that when the issue is clearly drawn with reference to an officer like the controller-general⁵⁶ or an interstate commerce commissioner, or perhaps

⁵² We are less inclined to predict that this will be upheld than that the other type of restriction will be. It may be said, however, that the fact that tenure during good behavior was granted judges does not prove that the framers meant to forbid Congress to grant it to other officers. Here is a case where the maxim *expressio unius exclusio alterius* does not apply. Cf. on this point Springer et al. v. Government of Philippine Islands (72 L. ed.).

⁵³ Senator Pepper, of Pennsylvania.

⁵⁴ The dissenters were Justices Holmes, McReynolds, and Brandeis.

⁵⁵ Springer et al. v. Government of the Philippine Islands (72 L. ed.), while relating to usurpation of the appointing power by the territorial legislature, employs the reasoning of the Myers case, thus showing that the majority may in all probability consider the issue settled. But it should be noted that this case is analogous to the Myers case in that the facts before the Court do not justify the broad *dicta* of the Myers case. There is still a possibility, as suggested in the text above, that the Court will reconsider the matter when a sharply different case is presented.

⁵⁶ See Solicitor General Beck's statement cited in Willoughby on the Constitution (2nd ed., 1929), §1000. On the general subject, see *ibid.*, chap. 84.

with reference to other types of limitations,⁵⁷ the Court will not improbably begin to draw distinctions. This prediction is supported by the fact that the Chief Justice's ideas on expediency run counter to the generally accepted principles of the art of government,⁵⁸ and have been very ably criticized not only by the dissenting opinions, but by distinguished scholars like Professor Corwin.⁵⁹ A Court that is becoming increasingly sensitive to professional opinion will⁶⁰ undoubtedly at least undertake a careful reconsideration of this issue when it is faced with a case which is sharply different from *Myers v. United States*.⁶¹

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⁵⁷ Such as those suggested above as permissible.

⁵⁸ It is assumed that political scientists will generally agree that the tenure of quasi-judicial officers should not, as a matter of policy, be at the mercy of a political chief.

⁵⁹ See citation in note 25 above.

⁶⁰ It is generally recognized, for example, that law review criticisms affect judicial opinion.

⁶¹ Several major objections have been urged against the theory of this paper. One is that it would tend to establish parliamentary government. We may reply that there is no such thing as parliamentary government in general. It works one way in England, where the cabinet predominates, and another way in France, where groups in the Chamber dominate the cabinet. There is a certain common element, the necessity for political solidarity between legislature and executive. This paper seeks to get certain establishments as far as possible away from the political arena. Its theory will perhaps make Congress more powerful in some ways and the President less so. But it will not, in all probability, tend to set up the political solidarity referred to. We prefer to seek the desirable course without regard to whether that course will have the remote effect suggested. We cannot predict such remote effects. Anyway, our theory protects the independent constitutional powers of the President fully as much as any other.

Another contention is that the theory herein set forth violates the "logic" of the situation created by the separation of powers dichotomy. In answer, the reader is referred to the dissenting opinion of Mr. Justice Holmes in *Springer et al. v. Government of the Philippine Islands* (72 L. ed.). He points out, with illustrations from the cases, that the separation of powers is not an exact absolute from which we can make simple deductions to settle all cases. This paper is a protest against the idea that we must take one or the other horn of a dilemma.

Let us add that this theory could be applied without destroying the position of the chief executive as "president" of the government as a "business concern." He could still make his recommendations to the "board of directors," including his budget. Mr. W. F. Willoughby has recently suggested an important dis-

Marbury v. Madison Today. In 1803 the Supreme Court, in an opinion written by Chief Justice Marshall, refused to enforce an act of Congress on the ground that it conflicted with the Constitution. This decision¹ was noteworthy in that it was the first occasion on which the Supreme Court asserted such a right, and it has since come to be looked upon as the cornerstone of judicial supremacy.

The accuracy of the Chief Justice's reasoning has been attacked on various grounds, and it has been pointed out that every argument used by him in favor of judicial review begins by assuming the whole ground in dispute.² Very few authorities who have taken this view have asserted that the courts have usurped this power. Obviously nothing could be farther from the truth. A course of action which had the backing of nearly every influential member of the Constitutional Convention, which was frequently stated, generally without opposition, in the various ratifying conventions, and which was very clearly set forth in the *Federalist*, cannot be said to be a "usurpation of power" in any sense of the term. However, authorities do point out that the true explanation of this power of our courts is not to be found in the mere fact that we have a written constitution which is the "supreme law." Marshall himself recognized this shortly after the Marbury case, when he gave equal weight to the "general principles which are common to our free institutions" along with "the particular provisions of the Constitution of the United States," on the theory that "the nature of society and of government . . . prescribe some

tion between a bureau like that of the budget, concerned with the *running* of the government as a "going concern," and a branch like the postal department, which is itself and directly a *service performing* agency. It is not necessary for the President to control the latter. The real advantages of making him "business manager" come from his control of the institutional rather than the service-rendering agencies. Mr. Willoughby suggests that the eleven agencies of the former sort be grouped into one department under the President.

¹ Marbury v. Madison, 1 Cranch 137 (1803).

² Granting that the Constitution is a law of superior obligation, on what grounds do the courts assert that their judgment is superior to that of the legislature that enacted the law? If the oath of office be the test, would not a different conclusion seem necessary? The judges take the same oath as every other public official, national or state, save one—the oath of the President is provided in the Constitution itself. Consequently, the President becomes the guardian of the Constitution, with the duty of refusing to enforce any decision that the courts may render if he believes it to be an incorrect construction of that document.

limits to the legislative power."³ Not a single member of the Court dissented from this view, and Justice Johnson showed a willingness to go much further.⁴

It is not the purpose of the present article to discuss the true basis of judicial supremacy. That has been done on numerous occasions. Neither is it my purpose to discuss the validity of Marshall's view that judicial supremacy must be "one of the fundamental principles of our society," and that legislative supremacy would "subvert the very foundation" of constitutional government, nor yet the counter view of Blackstone that "to set the judicial power above that of the legislature . . . would be subversive of all government."⁵ Such questions cannot be solved either by legal reasoning or by abstract theory. I propose to examine *Marbury v. Madison* from an entirely different angle, with a view to answering two questions: First, was the Court called upon to decide the constitutionality of the act of Congress, or did the Chief Justice and the Court manufacture this "necessity?" Second, granting that a decision was necessary on this point, was the question decided properly? I shall seek to answer each question in the light of later Supreme Court decisions.

The case arose out of a refusal of President Jefferson to deliver commissions as justices of the peace of the District of Columbia to Marbury and others, such commissions having been signed by President Adams immediately before the expiration of his term of office. The Judiciary Act of 1789 authorized the Supreme Court "to issue writs of mandamus . . . to any . . . persons holding office under the authority of the United States." In pursuance of this statute, Marbury and others moved the Court for a rule directing James Madison, secretary of state, to show cause why such a writ should not issue commanding delivery of their commissions. The opinion of the Court raised three questions: First, were the petitioners entitled to their commissions? Second, was mandamus a proper writ? Having answered both in the affirmative, the Court reached the third question:

³ *Fletcher v. Peck*, 6 Cranch 87 (1810), often referred to as the Yazoo Frauds case.

⁴ Johnson, J., stated, "I do not hesitate to declare that a state does not possess the power of revoking its own grants. But I do it on a general principle, on the reason and nature of things: a principle which will impose laws even on the Deity." He added that he wished it "distinctly understood that [his] opinion on this point is not founded on the provision in the Constitution." *Ibid.*, 143-144.

⁵ *Commentaries*, Bk. I, 91.

Did it have jurisdiction to grant a writ of mandamus in an original proceeding? Here the Court examined the Constitution, and found no such jurisdiction granted. It examined the statute, and construed it to purport to give such jurisdiction. The final step was to hold that, in extending the jurisdiction of the Court, it conflicted with the Constitution, and was therefore void and of no effect.

Was the Court justified in passing upon these two preliminary questions before passing to the third, that of jurisdiction? President Jefferson said, in no uncertain terms, that it was not, but that in doing so it had taken up the cause of a defeated political party, and had stepped outside its proper sphere to deliver a lecture to the Chief Executive. It has since become an established custom, in constitutional cases, that the Court will not pass upon the validity of a statute if the case can be decided upon any other ground. This doctrine is frequently cited to disprove Jefferson's charge, and to justify the action of the Court. It is very doubtful whether Marshall had this idea in mind. Even so, it is an unsound justification. There was no other ground on which the Court could decide the case.

The application of the rule that a court will refuse to pass upon the constitutionality of a statute if such a decision is not necessary to the final disposition of the case is very simple. Suppose that P. sues D., alleging that statute X entitles him to recover \$2,000. D. sets up a double defense: First, P. has surrendered his right to the \$2,000; second, the statute is unconstitutional. If the court finds that the first defense is true, it will not go into the question of the validity of the statute, since this could not alter the disposition of P's claim.

Marbury v. Madison presents an entirely different set of facts. The validity of the statute was of controlling importance, for it was the sole source of the jurisdiction of the Court even to hear the case, and to render any decision. Having no jurisdiction, the Court's statement that *Marbury* was entitled to the commission was not a part of the decision, but was *dicta* purely and simply. A contrary conclusion, then, that he was not entitled to this commission would likewise have been *dicta*. It would have bound no one, not even a lower federal judge. It could not have been made a ground for the disposition of the case.⁶

⁶ "Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." Chief Justice Chase in *ex parte McCordle*, 7 Wallace 506, 514 (1868).

The Supreme Court itself, in a recent decision, has upheld this view, and has frustrated the attempt to justify the remarks of the Court on the illegality of the President's line of conduct. In an opinion written by Chief Justice Taft,⁷ Marshall's conclusions in this regard were brushed aside as not being part of the decision, but only an "obiter dissertation." The Supreme Court itself has vindicated President Jefferson's reply.

Even after deciding that Marbury was entitled to his commission and that mandamus was a proper writ, there was no necessity for holding that the statute involved was unconstitutional. Even granting that Congress has no authority to add to the original jurisdiction of the Supreme Court, there was still no such necessity; and few courts today would reach such a conclusion. The statute, properly construed, did not extend its jurisdiction; it merely gave authority to issue writs of mandamus in all proper cases where the Court did have original jurisdiction.⁸ Such a construction would have given the same result: Marbury's right to office would have been asserted by the Court, and its power to aid him in securing his rights would still have been denied. It would have lacked but one feature of the other construction—the Court would not have been called upon to hold void a statute passed by Congress.

But the correctness of the Court's conclusion that Congress cannot add to the original jurisdiction of the Supreme Court is anything but certain. The Constitution merely provides that in certain types of cases "the Supreme Court shall have original jurisdiction. In all other cases before mentioned, the Supreme Court shall have appellate jurisdiction . . . with such exceptions, and under such regulations, as the Congress shall make."⁹ There are two very different views as to the proper interpretation of this clause. The first is that the grant was non-exclusive and could be added to by Congress. This was the view, according to the Court, taken by the first Congress in 1789, in giving it jurisdiction to issue writs of mandamus in cases not otherwise falling within its jurisdiction. The contrary view is that the grant was exclusive, and could not be altered by Congress. This was the view taken by Marshall and the Court. However, this con-

⁷ *Myers v. U.S.*, 272 U.S. 52 (1926). See also *Parsons v. U.S.*, 167 U.S. 324 (1897).

⁸ This is the form in which the statute reads today. 28 U.S.C.A., Sect. 342. See Corwin, *The Doctrine of Judicial Review*, 7-9.

⁹ Art. III, sect. 2, cl. 2.

struction has not been consistently followed. Indeed, by the very act in question, the Judiciary Act of 1789, Congress gave the inferior federal courts concurrent jurisdiction with the Supreme Court over certain cases falling within the original jurisdiction of the latter. These grants to the lower courts are in effect today,¹⁰ and have been approved in numerous cases.

These grants can be distinguished from the one involved in the Marbury case in that they do not extend the jurisdiction of the Supreme Court, nor do they narrow it to the extent of prohibiting the exercise of any of its original jurisdiction. But such is not the case in a line of decisions starting with *North Carolina v. United States*.¹¹ The Constitution contains no express provision extending the jurisdiction of the Supreme Court to suits between the United States and a state. In *Marbury v. Madison*, the Court held that Congress cannot add to its original jurisdiction; in this later line of decisions it held that it has implied jurisdiction in certain cases, entirely apart from any express provision in either Constitution or statute. It thus appears that the Court itself has rejected Marshall's narrow construction of this provision of the Constitution.¹²

If the value of the two doctrines be considered, apart from any narrow legal question, the view of Congress is undoubtedly the better. In most states today public officials are mandamusd in the highest court. This avoids appeals, delay, and unnecessary costs, and insures that important state questions will be passed upon directly by a court really competent to deal with them. Because of *Marbury v. Madison*, federal officials can be mandamusd only through the lower courts.¹³

Thus we are led to conclude, first, that the Court erred in passing upon the legality of Marbury's claim to office before passing to the statute purporting to give it jurisdiction to hear the case; second, that the statute, properly construed, did not give the Court jurisdiction, and therefore raised no issue of constitutionality; and third,

¹⁰ 28 U.S.C.A., Sect. 41 (18). The provision covers all suits against foreign consuls or vice-consuls.

¹¹ 136 U.S. 211 (1890).

¹² It also appears that the earlier attitude of the Supreme Court on the very statute involved in the Marbury case had been that Congress could add to the Court's original jurisdiction. See McLaughlin, "Marbury v. Madison Again," 14 *Amer. Bar Assoc. Jour.*, 155, 158, and cases cited.

¹³ Only the local courts of the District of Columbia have been given jurisdiction in such cases.

granting that the issue of constitutionality was involved, it was incorrectly decided.

There remains another point to be considered. Granting that the Court was correct in deciding that Marbury's right to the commission had to be settled before the validity of an act of Congress could be brought into dispute, this question should have been answered in the negative; and so, following the Court's own line of reasoning, the constitutionality of this statute should never have been raised. *Marbury v. Madison* went on the theory that the President had no power to remove Marbury from office until the five-year period for which he had been appointed had expired, although the statute was silent as to removal. No decision of the Court has ever upheld this view. Instead, it has been uniformly held that, when the statute is silent on the question, the President may remove at pleasure.¹⁴ Consequently, a proper answer to the question would have been that Marbury was not entitled to his commission. The case would then have ended there, questions two and three going unanswered.

As we have noted above, the opinion was written by the Chief Justice, John Marshall. It may appear harsh, but it is none the less necessary to point out that it would have been more in keeping with sound legal ethics had Marshall, who had a personal interest in the case, withdrawn from the Court during its consideration. As it is, he appears in the rôle of advocate rather than of judge, passing judgment upon his own case.

Few rules of judicial ethics are more definite today than that a member of the court who has a personal interest in the case in hand will not sit during the disposition of that case. This rule is well illustrated in the line of decisions that culminated in *Adkins v. Children's Hospital*,¹⁵ decided by the Supreme Court in 1923, holding that minimum wage laws for women violate the guarantees of "due process of law," and are unconstitutional. Six years earlier the Court had been faced with the same set of facts and the same questions in *Stettler v. O'Hara*,¹⁶ a case appealed from the supreme court of

¹⁴ See *Parsons v. U.S.*, 167 U.S. 324 (1897), where the President was sustained in removing a federal district attorney before the expiration of his four-year term. It need scarcely be added that the validity of this view in no way depends upon the soundness of the *Myers* case. In that case the Court was faced with a statute that expressly provided that Myers could be removed only "by the President by and with the consent of the Senate."

¹⁵ 261 U.S. 525 (1923).

¹⁶ 243 U.S. 629 (1917).

Oregon. At this time such acts were in force in a number of Continental countries and in England, Australia, Canada, and South Africa, as well as in a dozen of our own states. The Oregon statute had twice been unanimously upheld by the supreme court of the state. With the overwhelming backing of the nations of the world, and with the weight of judicial opinion in this country decidedly favorable, a decision upholding the Oregon statute might well have been expected. It was not forthcoming because one judge withdrew from consideration of the case, leaving a court of eight.

The case had been argued before the Oregon courts by Louis D. Brandeis. Elevated to the Supreme Court by President Wilson, Mr. Justice Brandeis refused to sit as judge in a case where he had been of counsel. The result was a four to four decision which, although it upheld the verdict of the state court, left the question open for the future. Had he not withdrawn, a five to four decision upholding this type of statute would have resulted. Instead, it was later to go down to defeat before a bare majority of one, with the result that minimum wage laws for women are unconstitutional, rather than constitutional, today.

John Marshall's interest in the Marbury case was as personal as that of Brandeis in the Stettler and Adkins cases. Before his appointment to the Supreme Court he had been secretary of state in the cabinet of President Adams. He held this position at the time that Adams signed the commissions of the "midnight judges," and consequently it devolved upon him to deliver them to the new appointees. In the press of business in winding up the affairs of the Federalist régime he neglected to do this. Thus he found himself no longer secretary of state, but with these commissions, still undelivered, lying on his former desk in the executive offices. *Marbury v. Madison* was an attempt to compel his successor to do what he, Marshall, had failed to do. Brandeis, because he had been of counsel, refused to sit in either the Stettler or the Adkins case. Marshall, although he was a real party in interest in the Marbury case, not only retained his seat, but wrote the opinion of the Court.

In answering the questions raised at the opening of this article, we have been led to conclude that the "necessity" faced by the Court of setting aside an act of Congress as unconstitutional existed largely in the minds of the judges, rather than in the facts of the case. Why should the Court have been so ready to follow this line of argument? If we grant that political expediency plays an important part in

many Supreme Court decisions, we have a possible explanation in the change of the tide of public opinion against judicial review. We noted above that at the time of the adoption of the Constitution, and in the years immediately following, opinion was predominantly in favor of the courts having this authority. But the pendulum was swinging in the other direction, and by 1803 the opposition to judicial review was at its height. This opposition had been accentuated by the defeat of the Federalist party in the election of 1800, and the advent of the Jeffersonian Republican party to power. There were, then, very good reasons for wishing to assert the right of the Court to review acts of Congress, in no uncertain language, while there was yet time. The fact that in doing so the Court was able to take a back-hand slap at the arch-enemy of the Federalist party, President Jefferson, did not detract from this desire.

Even though the case was decided at the height of the opposition to judicial review, the attacks upon the decision were not based on this ground, but on the fact that it announced that the courts might mandamus a cabinet officer who was acting by direction of the President. The real dispute was between the President and the Court, not the Court and Congress. The immediate reaction to the decision was decidedly unfavorable, since it added to the distrust of the Court on the part of the Administration, and heightened the ill feeling between the two political parties. It likewise lowered the Court in the eyes of the public. The tribunal had become the champion of a defeated faction. In doing so it had stated, in no uncertain language, that President Jefferson was legally bound to commission Marbury as a justice of the peace. Marbury never received his commission; and the action of the President, branded illegal by the Court, received the support of public opinion. Doubtless the same result would have followed had the Court taken a more determined stand, asserted its jurisdiction, and actually issued a writ of mandamus requiring Madison to deliver the commission. The judges are to be complimented on their sound judgment in not going this far.

The decision, however, has been of very great importance in establishing the doctrine of judicial review. Because attacks on the opinion centered about the *dicta* in regard to the illegality of the President's conduct, this part of the decision attracted very little attention, and consequently very little opposition. Although it was over half a century before the Supreme Court again asserted its authority to set aside an act of Congress as unconstitutional,¹⁷ the decision gave an

¹⁷ Dred Scott v. Sandford, 19 How. 393 (1857).

added impetus to the state courts to assert a similar right as to state legislation, and judicial review soon came to be looked upon as the special privilege and duty of every court, high or low. And so it has remained, with an ever widening scope, to the present day. Had it not been for the precedent established by *Marbury v. Madison*, it is reasonable to believe that the Court would not have ventured to assert such a doctrine in the *Dred Scott* case. Instead, we might be governed, as are the great majority of the nations of the world, under a system of legislative supremacy.

In conclusion, it can be said that nothing remains of *Marbury v. Madison* except its influence upon the development of our system of constitutional law. Its line of reasoning stands repudiated by the Supreme Court itself; even its justification of judicial supremacy has been demolished by various commentators, including later judges of the Supreme Court, and indeed later opinions of Marshall himself. Like the *Slaughter House Cases*,¹⁸ *Munn v. Illinois*,¹⁹ and *Davidson v. New Orleans*,²⁰ it stands as a landmark in the development of judicial review. But, like the cases mentioned, it has been shorn of all but its historical importance and stands as a warning to those who would attempt to expound the rules of constitutional law simply through a process of analytical reasoning, ignoring the very important contributions of economics and of politics.

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The Report of the Steiwer Committee. The special Senate committee investigating presidential campaign expenditures presented its report on February 28, 1929.¹ The report contains five pages of explanatory material and recommendations, and twenty-five pages of

¹⁸ 16 Wall. 36 (1873).

¹⁹ 94 U.S. 113 (1876).

²⁰ 96 U.S. 97 (1878).

¹ See this *Review*, vol. 23, pp. 59-69 (Feb., 1929) for my article on "Campaign Funds in 1928." The figures in that article and those in the Steiwer report appear to conflict in several respects. These differences, it is hoped, will be cleared up by the present article. My previous article had to be completed the first week in January in order to be published in the February *Review*. The Steiwer report is Sen. Rep. No. 2024, 70th Congress, 2nd Session. An earlier report on the pre-convention campaign, Sen. Rep. No. 1480, merely reproduces the material found in Part 4 of the committee hearings.

tabulations. The recommendations are not very sweeping, but they strike at four existing defects in our present federal corrupt practices act, namely, the failure to regulate the conduct of conventions and primary elections for the nomination of presidential candidates, to extend the law to political groups operating in individual states, to require careful and accurate itemization of every party expenditure, and to regulate the borrowing of money by political committees. The committee does not argue the constitutional points involved in its first two recommendations, and it does not reach the real problem involved in party deficits with its fourth recommendation. It leaves many vital problems to future committees.

The information collected by the committee, by means of hearings and correspondence principally, has been set forth in fourteen tables. There is much useful material in these tables, and several angles of the problem of party finance are clearly brought out by the figures. But there are some serious errors, especially in the tabulation of totals. Tables iv and v dealing with the national committee accounts are inaccurate and misleading. The proof of this statement is as follows. The accounts filed by the two national committees, both with the clerk of the House (according to law) and with the Steiwer committee, show that the Republican national committee received for its own purposes the sum of \$3,814,000. On page 8 of the report we find the figure \$5,715,000. This latter figure is arrived at by adding in the money raised by the national committee for the state committees under a joint arrangement with the states, and then deducting certain sums raised in the states and given to the national committee. The money used by the state committees should be credited to the state committees and not to the national committee, especially when it is desired to get a total figure of all campaign expenditures properly itemized. Otherwise, confusion will result. The Steiwer report has taken this one wrong figure, and thereby has mixed up its other total tabulations. In other words, the committee has used the wrong basis of classification and tabulation.

Whoever made up the report took this wrong figure for Republican national committee receipts, added the state committee receipts (which do not include the money transferred from the national committee), and thus arrived at the total of \$10,062,000. Now the Republican national committee actually raised for itself \$3,814,000. According to the report, the state committees raised \$4,346,000, and the national committee granted \$2,191,000 to the state committees.

This makes the sum of \$10,351,000. But actually the national committee collected for and gave to the state committees \$2,382,000, and not \$2,191,000 as shown in Table iv. The correct total sum of all Republican state and national and subsidiary committee receipts should be arrived at as follows:

National committee receipts (exclusive of transfers)	\$3,814,000
State and subsidiary committee receipts	4,346,000
Money transferred for state purposes by national committee	2,382,000
Money transferred for senatorial and congressional committees	344,000
Total Republican receipts	<u>\$10,886,000</u>

Using the data collected by the committee, total Democratic receipts should appear as follows:

National committee receipts (exclusive of transfers, but inclusive of loans)	\$3,260,000
State and subsidiary committee receipts	2,042,000
Money transferred for state purposes by national committee	2,184,000
Total Democratic receipts	<u>\$7,486,000</u>

This last figure, added to the figure showing total Republican receipts, brings the grand total to \$18,372,000. This is a mere million more than is shown in the Steiwer report!

Take now the figures for expenditures. The report assumes that all advances from the national committees are included in the state committee expenditures. But the assumption is incorrect. For instance, the Democratic state committee of Kentucky is recorded as having spent \$112,000, while on page 8 of the report it is noted that Kentucky received \$236,000 from the Democratic national committee, and this sum is therefore deducted from the national committee account. This is not necessarily a case of the state committee failing to report its entire expenditure (although that is probably the explanation); at all events, the Steiwer report fails to include the \$124,000 difference in its total tabulation. One hesitates, therefore, to present a figure representing total expenditures from the data given. Such a figure, however, is always the most useful one in studying party funds.

Space prevents detailed discussion of other mistakes, but they should be listed. On page 18 the ways and means committee of the Republican national committee for Pennsylvania is listed with receipts of \$683,000, but on page 8 Pennsylvania is credited with \$547,000. The Ohio state Democratic figures are wrong, and the report assumes

that the Republicans spent only the \$151,000 which the national committee sent them. A similar assumption is made with respect to the Democratic state committee figures for Missouri. Again, no mention is made of congressional and senatorial committee receipts or disbursements, although presumably these are included with the national committee accounts. The report also makes it appear that both parties ended the campaign with handsome surpluses, when such is not the case. Finally, Table XIII leads one to suppose that the contributions of over \$5,000 listed there were made entirely "in behalf of presidential candidates." Again, such is not the case.

Enough has been said to establish the point that the Steiwer report's tabulations and deductions are not altogether accurate. One should be very careful to make tabulations which will check, and which will present all the essential facts. The report as it stands is over a million dollars wrong in its grand total of receipts, and one cannot say how many hundred thousand dollars wrong in expenditures, because it has failed to classify and tabulate the figures in the proper way. What other errors there may be cannot be checked. It is inaccurate to say that the Democratic national committee had net expenditures of \$3,157,000, just as it is wrong to credit the Republican national committee with receipts of \$5,715,000.

Even though the Steiwer report is inaccurate in its calculations, it contains much useful material which cannot be secured elsewhere. Above everything else, the committee has done a great service by collecting figures of state committee receipts and disbursements, and also figures of the financial transactions of numerous subsidiary committees. In fact, the report's chief contribution lies in its splendid tabulation of the receipts and expenditures of organizations which came into existence during the campaign to work with the two parties. The report shows clearly how necessary it is to centralize the responsibility for political expenditures, and until this is done, to scrutinize carefully the accounts of all these non-party committees. Again, the report contains a very useful table showing the number of large contributions, the size of the contributions, and the proportion which these various-sized contributions bear to the total sum raised. There are two tables which list the names of all persons who contributed \$5,000 and over to the funds of the two parties. Two interesting, but rather speculative, tables show the per capita expenditures of the two parties with respect to total population and the votes cast.

The Steiwer report now takes its place alongside the Kenyon and Borah reports. All of these documents contain valuable information which should be used by Congress in enacting comprehensive legislation to regulate the use of money in elections.

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Administrative Reorganization and the University of Minnesota. Those who have followed the progress of administrative reorganization in Minnesota will recall that the reorganization act in that state established a commission on administration and finance similar to the commission with the same name in Massachusetts.¹ Large powers of supervision over the financial affairs of the state are conferred. Among them is a provision that the state auditor may approve no warrant upon the state treasurer for an expenditure from an appropriation unless the object of the disbursement is one which has been approved by the commission. Every department, officer, agency, and institution is required to present for the commission's approval, each three months, an estimate of its needs for the following quarter.

The regents of the University of Minnesota, pursuant to the requirements of the act, had submitted to the commission for its approval in one of their quarterly estimates a request for authority to expend \$40,000 to provide group insurance for the faculty and employees of the university. The commission declined to approve the item, on the ground that it might be taken as a precedent upon which to base demands for similar insurance for the employees of other state agencies. The regents were advised to apply to the legislature for specific authority. This they declined to do, as they claimed to have control of sufficient funds aside from legislative appropriations to carry the project through.² The regents employed actuaries to prepare a preliminary report on the form of insurance contract to be used. A voucher to pay for these services was presented to the state auditor, who refused to draw a warrant, alleging that under the reorganization act there were no funds available to meet the expenditure. The regents thereupon applied for a writ of mandamus to compel the issuance of a warrant. The district court issued the writ. The auditor appealed,

¹ Laws of 1925, chap. 426, art. 3.

² The regents expend annually over \$8,500,000, of which \$3,500,000 is specifically appropriated.

and the issuance of the writ was upheld by the supreme court of the state.³

In the brief presented by counsel for the university before the supreme court of the state the regents claimed immunity from interference in the management of the financial affairs of the university, on three different grounds: (1) constitutional status of the board of regents, (2) statutory construction, and (3) unconstitutionality of the reorganization act. The court decided the case upon the first point alone, although it pointed out that the second was not sound. The third point was ignored. It is in this third point that the chief interest of the case lies for students of public administration, not because of any precedent established by the case, but because of the arguments of counsel for the regents, which it seems are cogent and which may form the basis for further litigation in which the points raised cannot be evaded.

This brief points out that the commission on administration and finance claims the power to make available to, or to deny to, the several state agencies moneys which the legislature has appropriated. In so far as the commission actually determines the amount which will be made available, it is exercising legislative power. Such power may not, under our constitutional system, be delegated to an administrative agency. On the other hand, if the appropriation be regarded as completely made by the legislature, then the commission, in refusing to allow the whole amount of the appropriation to be used, is exercising a veto power greater than that accorded to the governor by the state constitution, since he may only veto items, not reduce them. Such suggestions should afford food for thought for proponents of administrative reorganization. It should not be necessary to sacrifice established principles of constitutional government to secure the advantages of centralized financial control. Further efforts to provide more acceptable devices must be made.

The University of Minnesota has secured its freedom from statutory restraint. As a constitutional department, it has been held to be free from the supervision of the commission on administration and finance. But the victory has not been all gain. The governor, when informed of the decision of the supreme court, reminded the public that the university's territorial charter, which seemingly was revived by the decision, placed the institution under legislative control.

³ State ex rel. University of Minnesota v. Chase (1928), 175 Minn. 259; 220 N. W. 951.

During a long session, a legislative committee groped for some solution of the problem which would be acceptable to the administration as well as to the university. There was a fundamental difference of opinion between the upper and lower houses as to the propriety of the reorganization act, the former being inclined to oppose the governor's wishes and the latter showing a disposition to uphold them. The governor himself determined that the university should suffer for its temerity. The institution's appropriations were severely cut in the governor's budget. The appropriation first made was vetoed in its entirety. On the last night of the session a new bill carrying a reduced figure was passed. A sum of \$300,000 per year for ten years for building purposes was lost through the veto, and the net amount granted was \$30,000 less than the appropriation for 1927-28. The president has recommended an increase in tuition charges to meet a \$300,000 deficiency in the appropriation finally made. Before adjournment, the two houses of the legislature met in joint session, as prescribed by the university's territorial charter, and elected a board of twelve regents, excluding the president, the governor, and the commissioner of education, who had been serving as regents ex-officio under a later act. An interim legislative commission of ten members was appointed to make a rather thorough study of the relation of the university to the legislative and executive branches of the state. The members of this commission are largely administration leaders, and the next two years promise interesting developments.

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Ohio State University.

STATE CONSTITUTIONAL LAW IN 1928-1929*

OLIVER P. FIELD

University of Minnesota

A. ADOPTION AND AMENDMENT OF CONSTITUTIONS

No new constitution was adopted in any state in 1928-29, and relatively few legal problems concerning the amending process were decided during the year. The South Carolina court upheld an amendment proposed by the legislature and ratified by the voters notwithstanding attacks based on the inclusion of several subjects in the resolution proposing the amendment, the failure of the officers charged with the preparation of the ballots to print the amendment in full, and the absence of the title of the amendment from the journals of the legislature, the title being entered on the journals only as part of the resolution proposing the amendment. Such a provision as that contained in Article III, Section 17, of the constitution of South Carolina providing that "every act or resolution having the force of law shall relate to but one subject, and that shall be expressed in the title," might well be held not to apply to resolutions proposing amendments to the constitution, but to be restricted in application to ordinary acts of legislation, thus distinguishing acts of legislation from constituent acts. The court did not consider this distinction, but settled the case on its merits, deciding that the resolution did not contain separate subjects, that the ballots need not contain the entire text of the amendment, and that it was sufficient if the resolution proposing the amendment containing the title was printed in the journals of the two houses.¹

The constitution of South Carolina permits the supreme court of that state to call upon the judges of the circuit courts to sit with it when constitutional questions are being considered. Prior to a recent amendment, the circuit judges could be summoned when "any two of them" (referring to judges of the supreme court) so requested. An amendment designed to require the request of three of the supreme

* Cf. W. L. Godshall, "State Constitutional Development through Amendment in 1928," in this *Review*, vol. 23, p. 404. Cases decided after May 1, 1929, are not covered in the present article.

¹ *Fleming v. Royall*, 143 S. E. 162 (S. C. 1928).

court judges was proposed by the legislature and ratified by the voters. However, in the portion of the resolution describing the proposed change the statement was made that the word "two" was to be stricken from the constitution at this point and the word "three" inserted, but in that part of the resolution describing the manner in which the amended section would read, "any of them" was printed instead of "three of them." The question presented to the court was whether the circuit judges could now be called to the aid of the supreme court at the request of a single judge, or whether the request of three judges of the supreme court was required. The court decided that the historical background of the proposed amendment and the general understanding of the bench, the bar, and the public made it clear that the legislature meant to propose and the people to ratify an amendment requiring the request of three judges instead of two.²

A Colorado case further defines the grounds for rejecting signatures on a petition initiating a constitutional amendment in that state,³ and in *State ex rel. Booth v. Hinkle*⁴ the supreme court of Washington held that the period for filing arguments for and against constitutional amendments proposed by the legislature should be a reasonable one, neither the constitution nor the statutes expressly covering the point. The court thought that it would be unreasonable to restrict the period for filing such arguments with the secretary of state to that specified in the statutes for amendments proposed by the initiative, because amendments proposed by the initiative would normally have attracted more attention on the part of the public than those proposed by the legislature.

B. STRUCTURE AND FUNCTIONS OF GOVERNMENT

1. Separation of Powers. The doctrine of the separation of powers may operate to restrain the legislature from delegating some of its own power to the administrative or judicial branches of the government. It may also operate to restrain the legislature from transferring a power properly belonging to the administrative department to the judicial department, and *vice versa*. An Idaho case⁵ held that a board of land commissioners may be authorized to fix the salary of deputies upon recommendations made by the state forester. In California a

² *Duncan v. Record Publishing Co.*, 143 S. E. 31 (S. C. 1927).

³ *Miller v. Armstrong*, 270 Pac. 877 (Col. 1928).

⁴ 269 Pac. 818 (Wash. 1928).

⁵ *Chambers v. McCollum*, 272 Pac. 707 (Idaho 1928).

statute thought unduly to restrict the power of the courts in admitting persons to the practice of law was declared invalid.⁶

Sometimes the exercise by the administrative branch of powers thought to be judicial in their nature causes the exercise of such powers to be challenged on the ground that it violates the doctrine of separation of powers. In *Dickey v. Volker*,⁷ the supreme court of Missouri decided that the refusal of the attorney-general to institute legal action is not an exercise of judicial power.

The Idaho board of commissioners of the state bar was given the power by statute "to provide for the disciplining of its officers and the members of its committees in the event of refusal, neglect, failure or corrupt or wrongful performance of their respective duties." The statute granting the board this power was held unconstitutional on the ground that it gave to the board the judicial power of punishment.⁸ In the course of its opinion the court said that the board could have been given power to conduct investigations which might be reported to a court, and that it might formulate certain rules and regulations governing its work, which, if adopted or approved by the supreme court, would be valid. Not all of the rules of the board had been so approved, and the court thought that the board could not be given the power to try a member of the bar and discipline him without action on the part of the judiciary at some stage in the proceeding.

Modern statutes concerning administration often encounter the objection that they include grants to administrative boards or officers of power to perform legislative functions. The problem in this class of cases often resolves itself into a question of how much discretion the legislature may intrust to administrative officers. The general principle is well established that the legislature must formulate the general policy to be followed, and that the administrative officer may be authorized to formulate rules relative to the details of the execution of the statute. The difficulty comes when this general principle is sought to be applied to specific statutes. Sometimes the general principle governing this type of case is formulated in the statement that the statute, when it leaves the legislature's hands, must be a complete statute, and that the administrative officer must not be given authority to fill in the missing portions of the law. This is only

⁶ In re Cate, 273 Pac. 617 (Cal. D. C. App. 1928).

⁷ 11 S. W. (2d) 278 (Mo. 1928).

⁸ In re Edwards, 266 Pac. 665 (Idaho 1928).

another way of stating that the legislature must indicate its policy with sufficient precision to satisfy the court that questions of policy thought to be so important that they should be determined by the legislature will not be left to the determination of administrative boards or officers.

Initiated measures apparently come within the rules governing the separation of powers in the same way as legislative acts. The Arizona constitution, Article xxii, Section 14, provides that any law which may be enacted by the legislature under this constitution may be enacted by the people under the initiative, and that any law which may not be enacted by the legislature under this constitution shall not be enacted by the people. An initiated statute gave to a board of control the power to "establish, maintain, or operate any manufacturing establishment or institution" whenever in the judgment of the board it should be for the best interest of the state to do so. This statute was held invalid as in conflict with the doctrine of the separation of powers.⁹ The court thought that the statute was incomplete and could be made complete only by a determination on the part of the board as to whether the proposed business venture should be launched; and that question the court believed to be a legislative question of policy, the settlement of which could not be intrusted to an administrative board.

Statutes forbidding the operation of bus lines without a certificate of convenience obtained from a commission were held constitutional in Montana¹⁰ and unconstitutional in Iowa.¹¹ The Montana court held that the state could control the use of the highways and that the test of "public convenience" was a sufficient guide for the commission to follow. The Iowa court, on the other hand, held that only the determination of facts could be intrusted to the commission. A decision by the commission, said the court, of the question whether public convenience and necessity required the issuance of a certificate of convenience is not a determination of existing facts, but rather a determination of future rights and duties. The formulation of rules for the future was held by the Iowa court to be a legislative function which could not be delegated to the commission.

Statutes giving boards or officers the power to pass upon the effect of drainage construction projects on the flow of, or the change of

⁹ *Tillotson v. Frohmiller*, 271 Pac. 867 (Ariz. 1928).

¹⁰ *Northern Pac. Ry. v. Bennett*, 272 Pac. 987 (Mont. 1928).

¹¹ *Appeal of Beasley Bros.*, 202 N. W. 306 (Ia. 1928).

courses of, streams;¹² to establish by-laws, rules, and regulations for the operation of a bridge;¹³ to regulate the form of bonds to be given by banks;¹⁴ and to promulgate rules and regulations not in conflict with the rules of a superior administrative board for the protection of the public health in a district,¹⁵ were held constitutional. In each of them the courts felt that the legislative policy had been sufficiently indicated. The Maryland court, in *Leonard v. Earle*,¹⁶ had before it a statute authorizing a board to grant licenses to individuals to gather oyster shells on condition that a payment to the state be made of at least ten per cent of the shells, or (at the discretion of the board) their equivalent in money, the market value as of a certain date to be used in calculating the money equivalent. The fact that the board was empowered to choose between these two conditions in granting the license was held not to invalidate the statute. The impracticability of requiring that the legislature decide the particular situations in which shells should be exacted and those in which their money equivalent should be required was emphasized by the court in its opinion. The Minnesota court reached a like decision in a case involving a statute authorizing the executive council to determine whether the state should proceed against a surety or against the bank as a private creditor in case a depository of state funds became insolvent.¹⁷

A Kansas statute authorizing the executive council of that state to grant permission to take sand from river beds and to prescribe rules, terms, and regulations in the exercise of this licensing power, in addition to the power to fix the compensation to be paid to the state, was held valid.¹⁸ Statutes involving the grant of a privilege of the type involved in this case, and in the case previously referred to concerning the taking of oyster shells, are usually construed more liberally with respect to the requirements of the separation of powers than statutes involving regulatory restrictions on businesses not operating at the sufferance of the state.

¹² *Duck Island Hunting & Fishing Club v. Gillen Dock Co.*, 161 N. E. 300 (Ill. 1928).

¹³ *Klein v. City of Louisville*, 6 S. W. (2d) 1104 (Ky. 1928).

¹⁴ *Moody v. Jones*, 9 S. W. (2d) 446 (Tex. 1928).

¹⁵ *City of Ft. Smith v. Roberts*, 9 S. W. (2d) 75 (Ark. 1928).

¹⁶ 141 Atl. 714 (Md. 1928).

¹⁷ *In re Farmers State Bank of North Branch*, 219 W. N. 916 (Minn. 1928).

¹⁸ *Consumers Sand Co. v. Executive Council of Kansas*, 126 Kan. 233, 268 Pac. 123 (1928).

A Washington statute granting broad rule-making power to the supreme court of the state was upheld in *State ex rel. Foster-Wyman Lumber Co. v. Superior Court*.¹⁹ The formulation of such rules can be placed in the hands of the courts, and the constitutional provision (Article IV, Section 24) which states that the "judges of the Superior Court shall, from time to time, establish uniform rules for the government of superior courts" was held only to require that rules be uniform, and was not considered as restricting the power of the supreme court to formulate such rules in accordance with statutory authority. The incorporation of a road district may by statute be intrusted to a court²⁰ although it is the exercise of a legislative power. So, too, the Ohio court of common pleas may be authorized to permit highways to be constructed across railroad tracks, a hearing being provided for in the statute as to the necessity and convenience of such a crossing. The statute was held not to give the court the power to create the right to cross at any particular grade, because the statute itself created the right, whenever in a proper proceeding the court should determine that the conditions specified in the statute had been met. The function imposed on the court by this statute was held to be judicial rather than legislative.²¹ The Illinois court, however, held that a board of which a county judge was a member could not be given the power to lay out a school district, or alter the lines of an established school district, because this was held to be the exercise of a legislative function. School district boundaries were not to be altered unless it was shown to be for the convenience of the public, but the court pointed out that there was nothing to compel the board to make the alteration even if public convenience demanded it. The court thought, therefore, that too much discretion was reposed in the board.²²

A California statute authorized cities to enact zoning ordinances. The city of Stockton enacted such an ordinance and provided, among other things, that a permit for the erection of a business building might be issued if three-fourths of the adjacent landowners consented thereto, and if the city council should so order after a public hearing.

¹⁹ *State ex rel. Foster-Wyman Lumber Co. v. Superior Court*, 267 Pac. 770 (Wash. 1928).

²⁰ *State v. Hughesville Special Road District*, 6 S. W. (2d) 594 (Mo. 1928).

²¹ *Columbus, Del. & Marion Electric Co. v. Bd. of County Commrs.*, 118 Oh. St. 501, 161 N. E. 538 (1928).

²² *People ex rel. Bensenville Community High School*, 333 Ill. 430, 164 N. E. 696 (1928). But see *In re Common School District*, 222 N. W. 690 (S. D. 1928).

This provision of the ordinance was challenged as delegating to the property owners power to decide whether the permit should be granted. While the court did not expressly decide that this contention was sound, because the final power to decide on granting the permit rested with the city council, the court did intimate that it might be unconstitutional—though it went on to say that even if it were invalid the provision was separable and the whole scheme would, therefore, not fall with it, even though this particular portion be deemed invalid.²³

A North Carolina case raises the question whether a state board may be given the power to condemn land for the purpose of ceding it to the United States. The statute authorizing this procedure was assailed on the ground that it delegated to the national government the power of eminent domain. The statute was held valid on the ground that no delegation to the federal government had been established.²⁴

2. The Judiciary. The courts continue to exercise their functions of reviewing the validity of legislative²⁵ and administrative²⁶ acts. In reviewing legislation, however, a court will not pass upon the constitutionality of a statute which has not as yet been enacted into law. This is true whether a bill is pending before the legislature or whether a measure is being introduced by initiative and referendum.²⁷ Fixing punishment is still regarded as a legislative function, and courts are not at liberty to impose punishment which is heavier than that prescribed by statute.²⁸

In *Eich v. Czervonko*,²⁹ the Illinois court decided that a decree directing a master in chancery to make a deed transferring land in accordance with a judicial order did not constitute a delegation of judicial power. Statutes or decrees authorizing persons not holding

²³ *City of Stockton v. Frisbie & Latta*, 270 Pac. 270 (Cal. 1928).

²⁴ *Hagood v. Daughton*, 195 N. C. 811, 143 S. E. 841 (1928).

²⁵ See *State ex rel. Carson v. Kozu*, 270 Pac. 513 (Ore. 1928), suit to enjoin secretary of state from printing bill proposed by initiative.

²⁶ *Weer v. Page*, 141 Atl. 518 (Md. 1928), discussing conditions under which court will review action of officer rejecting application for permission to incorporate.

²⁷ See *supra* note 25.

²⁸ *People v. Cary*, 245 Ill. App. 100 (1927). See *state v. McGinnis*, 7 S. W. (2) 259 (Mo. 1928), holding that as long as the trial court sentence was within the penal statute the appellate court would not disturb. Also *Fox v. Commonwealth*, 161 N. E. 803 (Mass. 1928).

²⁹ 161 N. E. 865 (Ill. 1928).

a judicial office to perform acts such as the issuance of writs or the making of deeds are generally regarded as valid when a judicial officer approves these acts before they become effective, unless some express constitutional provision forbids the delegation of such work to any but strictly judicial officers.

The doctrine of political questions as applied by state and federal courts represents a sort of judicial self-limitation. The doctrine is sometimes confused with that of the separation of powers on the one hand, and with that of judicial notice on the other. The doctrine differs from that of the separation of powers in that it is utilized by the courts to excuse themselves from deciding a question which has already been decided by one of the two political departments, the legislature or the executive. In applying the doctrine of political questions a court follows a decision by the executive or legislative department without determining whether the decision was or was not as the court would have made it had it taken the responsibility for deciding the question originally. So, for example, the question of the territorial extent of a state may be regarded as a proper subject for the determination of the executive branch of state government, and once that branch has decided that a given territory belongs to the state, the courts will follow that determination without question.³⁰ The doctrine of judicial notice dispenses with proof according to the ordinary rules of evidence. The doctrine of political questions does not affect the problem of proof at all. Judicial notice may be taken of some act of the executive. That act may bind the courts. The particular method in which the court is to learn what the act is raises a problem of evidence. Judicial notice is a method of ascertaining what action the political department has taken. Were the ordinary rules of evidence followed, formal proof, subject to the strict rules of admissibility, would be necessary to prove the nature of the executive action. Judicial notice dispenses with this.

Legislative attempts to restrict what the courts deem properly to be judicial functions met, during the past year, with the usual severe treatment at the hands of the courts. For example, in *In re Cate*,³¹ the California court decided that the admission and reinstatement of attorneys to the practice of law is subject to the inherent power of the judiciary and that this power cannot be infringed upon by legislation. The court indicated three different attitudes which have been

³⁰ *Curry v. State*, 12 S. W. (2) 796 (Tex. Crim. App. 1928).

³¹ *In re Cate*, 270 Pac. 968 (Cal. 1928).

taken toward legislation regulating admission to the bar. One group of cases holds that the courts have inherent and exclusive power to regulate admission to the bar. A second group of cases holds that the courts will tolerate reasonable regulation established by the legislature on this subject, though such tolerance arises only from courtesy on the part of the courts. A third group of cases holds that the courts must follow reasonable rules prescribed by the legislature, but that unreasonable rules depriving the courts of their inherent power over admission to the bar will be disregarded. The determination of whether a legislative regulation is reasonable or not will, of course, be made by the courts. Courts tend to regard the power to admit, discipline, and disbar attorneys as a very important one, and they usually place considerable stress upon the fact that attorneys are officers of the court, and that judges are dependent to a great extent upon the honesty and efficiency of members of the bar.

Courts are also very jealous of their appellate jurisdiction and apparently resent legislative interference with it. If the constitution gives to an appellate court general appellate jurisdiction, the courts are likely to construe this to exclude legislative power to abridge or in any way interfere with this appellate jurisdiction or any of its incidents. The power to issue appropriate writs in the exercise of appellate jurisdiction cannot be restricted by legislation. It is not necessary that the use of such writs be authorized by statute. Appellate courts may use them as incidents to their appellate jurisdiction.³² This is true not only as to writs, but also as to the objects of control, the inferior courts. Thus an Ohio case decides that Article IV, Section 6, of the state constitution, providing that "the courts of appeals shall have . . . appellate jurisdiction in the trial of chancery cases," authorizes the court of appeals to take cases from a municipal court even though no statute expressly authorized appeals from this particular court to the court of appeals.³³ However, a Minnesota case³⁴ qualifies this view to some extent by holding that a violation of a city ordinance is not an offense against the state, but is, instead, an offense against the city. Therefore an appeal need not be allowed from the decision of such a case to the appellate courts of the state. Not only do the courts

³² *In re Albori*, 272 Pac. 321 (Cal. D. C. App. 1928); *Empire Investment Co. v. Hutchings*, 144 S. E. 209 (Ga. 1928).

³³ *Commonwealth Oil Co. v. Turk*, 118 Oh. St. 273, 160 N. E. 856 (1928).

³⁴ *State ex rel. Weich v. City of Red Wing*, 175 Minn. 222, 220 N. W. 611 (1928).

resent any legislative attempt to restrict their appellate jurisdiction, but they also view quite strictly statutes imposing duties upon them in connection with their appellate jurisdiction which are thought properly to belong to the inferior courts. A Mississippi statute authorizing the supreme court of that state to grant an extension of time for filing stenographic notes in a case coming up on appeal was held unconstitutional because stenographers of the lower courts are officers of those courts and not of the supreme court, and are, therefore, not subject to the jurisdiction of the latter court.³⁵

Constitutional provisions continue to impede the legislature in its attempt to create new courts or to alter the jurisdiction of some of the existing courts. Some courts are more liberal than others in their interpretation of these constitutional limitations resting upon the legislature and restricting its power to establish new courts. In Texas, the legislature is authorized in Article v, Section 1, of the constitution, to establish such other courts as it may deem necessary. Section 22 of the same article restricts the power of the legislature to increase or diminish the jurisdiction of county courts in civil and criminal matters. In Section 16 of Article v the county courts are given the general jurisdiction of probate courts. A statute creating a special court was held invalid because the court was invested with probate jurisdiction. Section 16, alluded to above, was held to vest probate jurisdiction in the county courts exclusively, and such jurisdiction could, therefore, not be given to any other court.³⁶ The supreme court of Florida, however, refused to construe a somewhat similar constitutional provision vesting jurisdiction over a particular class of cases in a named court or class of courts as excluding the legislature from granting to other courts jurisdiction over this class of cases.³⁷

State constitutions often contain provisions relating to the creation of judicial districts. Section 147 of the Alabama constitution was construed to forbid the creation of districts including less than one county, although one county could be made the basis of a judicial district if it fulfilled the constitutional requirements concerning population and wealth.³⁸ In *Messengil v. City of Clovis*,³⁹ the New Mexico court held that an oral request on the part of one judge that a judge

³⁵ *State v. White*, 119 So. 807 (Miss. 1929).

³⁶ *State v. Gillette's Estate*, 10 S. W. (2) 784 (Tex. Comm. of App. 1928).

³⁷ *State v. Sullivan*, 116 So. 255 (Fla. 1928).

³⁸ *In re Opinions of Justices*, 117 So. 50 (Ala. 1928).

³⁹ 267 Pac. 70 (N. Mex. 1928).

from another district hold court for him was sufficient to comply with a constitutional provision authorizing any district judge to hold court in any county at the request of the judge of such district, although the supreme court rules provided that a formal order should have been entered before the change was actually made. In Minnesota a judge may not try motions outside of his district,⁴⁰ but in Oklahoma it was held that district judges may be transferred to other districts than their own, particularly if their work in such other districts is in connection with a special court. Such a transfer of the district judges was held not to violate Article II, Section 11, of the Oklahoma constitution, which provides that every person elected or appointed to office shall give personal attention to his official duties.⁴¹

Section 28 of the Vermont constitution provides that justice shall be administered impartially by the courts of that state. A trial judge made the statement in a case that no evidence which could be introduced would change his mind; that his mind on the case had been made up. The statutory disqualifications for judges did not include bias. The supreme court of Vermont held, in *Leonard v. Willcox*, that such bias as was manifested in this case would disqualify the judge, and that the constitutional provision referred to was self-enacting, no statute being required to establish bias as a disqualification.⁴² A Texas statute gave to the justices of the peace fees only if the accused was convicted in a criminal case. No appeal to the supreme court was permitted unless the case involved a fine of \$100. The accused in *Ex parte Kelley* was fined one dollar and taxed costs amounting to \$23.35. Three dollars and eighty-five cents of this amount was for the justice of the peace. Article V, Section 11, of the Texas constitution disqualifies judges who are interested parties, and this was held to disqualify the justice in this case, and the statute was held invalid.⁴³ In connection with the qualifications of judges, the case of *Grogan v. Robinson*⁴⁴ might be mentioned. Two attorneys agreed that another attorney should act as a special judge, the regular judge being called out of town, but not being disqualified. The suit was a civil one, and the loser challenged the right of the special judge to act in this case. The Texas court of civil appeals held that the judgment was of no effect—that the constitution specified the conditions under which

⁴⁰ *State ex rel. Byram v. Johnson*, 173 Minn. 271, 217 N.W. 351 (1927).

⁴¹ *State ex rel. Babb v. Mathews*, 273 Pac. 352 (Okla. 1928).

⁴² *Leonard v. Willcox*, 142 Atl. 762 (Vt. 1928).

⁴³ *Ex parte Kelly*, 10 S.W. (2) 728 (Tex. Crim. App. 1928).

special judges might be chosen, and that, these conditions not being present in this case, the attorneys were not at liberty to agree upon a special judge. Special judges could be chosen only when the regular judges were disqualified.

Kentucky was apparently the twelfth state to establish a judicial council. A statute providing for the council was held valid in *Coleman v. Hurst*.⁴⁵ Numerous objections were raised. Among the points decided by the court were: (1) that the statute did not unconstitutionally raise the salaries of the members of the council who were already judges, because their added compensation was for the performance of new duties instead of for the performance of their already existing judicial duties; (2) that the office of judge and that of a member of the council were not incompatible within the meaning of the constitution; and (3) that it was not necessary that all of the members receive the same compensation. Curiously, \$5,000 seems to be the maximum salary which can be paid to the judges of Kentucky courts, the constitution expressly fixing that sum as a maximum salary for state officers other than the governor.

Contempt of Court. Several cases of contempt of court came before the highest tribunals of the states during the year. Some of them involved direct contempt, and others indirect contempt. Sometimes contempts are classified as those which touch the dignity of the court and those which affect the interests of private litigants.⁴⁶ Refusing to testify before a grand jury when complete immunity from prosecution on the basis of evidence presented to the grand jury was guaranteed by statute;⁴⁷ refusal to pay alimony in accordance with a judicial decree;⁴⁸ refusal to deliver custody of a child in accordance with a similar decree⁴⁹—all these were held to constitute contempt of court. In *Pace v. State*,⁵⁰ the husband of one of the witnesses in a damage suit assaulted one of the attorneys, who, in cross examination, made out his wife to be "a liar." The assault did not take place in the court room, but occurred in a hotel while the case was still pending before the court on a motion for retrial. This was held to constitute contempt of court. A flagrant attempt at cheating in a bar examination

⁴⁴ 8 S.W. (2) 571 (Tex. Civ. App. 1928).

⁴⁵ 11 S.W. (2) 133 (Ky. 1928).

⁴⁶ *Roanoke Waterworks Co. v. Roanoke Glass Co.*, 144 S.E. 460 (Va. 1928).

⁴⁷ *Baker v. State*, 5 S.W. (2) 337 (Ark. 1928).

⁴⁸ *Plankers v. Plankers*, 220 N.W. 414 (Minn. 1928).

⁴⁹ *In re Burns*, 271 Pac. 439 (Mont. 1928).

⁵⁰ *Pace v. State*, 7 S.W. (2) 29 (Ark. 1928).

occurred in Ohio recently, and in *State ex rel. Turner v. Albin*⁵¹ the supreme court of the state declared not only the candidates in the examination to be guilty of contempt, but also those who conspired with them in the scheme for imposing upon the court. The court declared that an attempt to commit a fraud upon the court is sufficient to constitute contempt.

Judges continue to be rather severe toward criticisms of their work and of their efficiency and motives in performing their duties. In *Jones v. State*,⁵² the Georgia court of appeals seemed to assume a bit hastily that the course of justice would be impeded and the court unjustifiably embarrassed and defamed by a petition presented to a trial judge alleging that he had held secret conferences with opposing counsel and that the case had been unjustifiably delayed, and stating that the petitioner felt that he would not receive a fair trial in this particular court. The petitioner asked, therefore, that the trial judge consider whether he was not disqualified to try the case. The person declared to be in contempt in this case was a son of a woman who was one of the parties to a suit. The son had urged his mother and the attorney to present the petition to the trial court. The attorney was also disciplined in contempt proceedings. Perhaps criticism against a decision such as that just mentioned should not be too hastily indulged in, but it does seem that many courts are over-sensitive on these matters and quick to see in them unworthy imputations upon the motives of the judge concerned.

Two significant cases involving contempt of court through publication or public statement occurred in Michigan and Indiana. The Michigan case, *Campbell v. Jeffries*,⁵³ turned on the publication of a newspaper article charging that a particular case had, from unworthy motives on the part of the court, been rushed through to decision while many other cases were being handled in a slow and dilatory manner. Among some of the more objectionable statements occurring in the article were: "This case smells to Heaven," and "The manner in which the case was rushed through court by the outgoing administration is hardly understandable." Concerning the article, the supreme court of Michigan said: "Neither refinement nor discussion is necessary to demonstrate that the interview published is contemptuous. It is so on its face. The language tends to degrade the

⁵¹ *State ex rel. Turner v. Albin*, 118 Oh. St. 527, 161 N.E. 792 (1928).

⁵² *Jones v. State*, 145 S.E. 914 (Ga. App. 1928).

⁵³ *Campbell v. Jeffries*, 244 Mich. 145, 161 N.W. 138 (1928).

court and to embarrass the administration of justice. It charges the court with participation in conduct so vile and so corrupt that it 'smells to Heaven.''' A more doubtful decision, if the emotional element involved in the case be eliminated, is that of the Indiana supreme court in *State v. Shumaker*.⁵⁴ Shumaker and others publicly criticized the court for its attitude in connection with the enforcement of the liquor laws. He was declared to be in contempt of court, and was fined \$250 and sentenced to sixty days on the state farm. The governor pardoned him on condition that he pay the fine. The supreme court held, however, that the governor was without power to pardon for the contempt, and declared that the term "offense" as used in the pardon clause of the Indiana constitution does not apply to proceedings for contempt of court. These proceedings, said the court, are not criminal in their nature. Offenses referred to in the pardon clause include only criminal offenses, and only those can be pardoned. In view of the statement of the court that the power to punish for contempt is inherent in constitutional courts, and that proceedings in contempt to save the court from libelous, degrading, and defamatory conduct or statements against the court cannot be limited by legislative act, one wonders whether the punitive element in a proceeding of this kind is not its dominating characteristic. The court really avoided deciding whether this was an unwarranted interference by the executive with the judicial power by deciding the case on the meaning of "offense." But one cannot read the decision without feeling that the court would have been willing to decide that the executive was without power to pardon for this type of contempt.

It has been held that the legislature may regulate the exercise of the power to punish for contempt of court, but that it may not abridge the power or unreasonably burden it.⁵⁵ The power to punish for contempt is repeatedly declared to be inherent in courts of record or constitutional courts,⁵⁶ and in Ohio the failure of the legislature to impose penalties for particular types of contempts was held not to be an obstacle to the judicial imposition of penalties for contempt.⁵⁷ Sometimes the courts phrase the power of the legislature with respect to contempts in a statement to the effect that the legislature may limit the punishment to be imposed for contempt, but may not define

⁵⁴ 164 N.E. 408 (Ind. 1928).

⁵⁵ *State ex rel. Turner v. Albin*, 118 Oh. St. 527, 161 N.E. 792 (1928).

⁵⁶ See cases cited in notes 50-55.

⁵⁷ See case cited in note 51.

contempts, even in the presence of a constitutional provision that the power to punish for contempt shall be limited by the legislature.

Minnesota has held that the provisions of the penal code do not apply to contempt proceedings,⁵⁸ but the Montana court takes the view that proceedings in contempt are criminal for the purposes of requiring substantial evidence for conviction.⁵⁹ The Oklahoma bill of rights⁶⁰ provides that "in no case shall a penalty or punishment be imposed for contempt until an opportunity to be heard is given." This was held to restrain the court from punishing even direct contempt in the absence of a hearing, although it was said to be sufficient to ask the defendant if he thought any legal cause existed why he should not be declared guilty of contempt.⁶¹ Good faith, the fact that the offender was acting on advice of counsel, and other mitigating circumstances were taken into consideration by several of the courts reducing the penalties imposed by trial judges. For example, in *Baker v. State*,⁶² the penalty was reduced from seven months to two months, and the same court in another case eliminated a jail sentence, leaving only a fine.⁶³

3. Administration. During the past year the supreme court of Minnesota has had occasion to construe the reorganization act of 1925 and to pass upon its scope. In 1925 the court said that the railroad and warehouse commission came within the phrase, "department or agency," and was, therefore, subject to the pre-audit provisions of the statute.⁶⁴ In *State ex rel. Mergens v. Babcock*,⁶⁵ the court held that the commission on administration and finance had the power to supervise and control the making of contracts by the highway department, thereby subjecting that department to the general financial control of the commission.

⁵⁸ *Supra*, note 52.

⁵⁹ *Plankers v. Plankers*, 220 N.W. 414 (Minn. 1928).

⁶⁰ *In re Burns*, 271 Pac. 439 (Mont. 1929).

⁶¹ *Moore v. State*, 272 Pac. 1032 (Okla. Crim. App. 1928).

⁶² *Baker v. State*, 5 S.W. (2) 337 (Ark. 1928).

⁶³ *Pace v. State*, 7 S.W. (2) 29 (Ark. 1928).

⁶⁴ *State ex rel. Yapp v. Chase*, 265 Minn. 268, 206 N.W. 396 (1925). J. S. Young "Reorganization of the Administrative Branch of the Minnesota Government," this *Review*, vol. 20, p. 69, discusses the 1925 reorganization statute and the powers and functions of the commission on administration and finance.

⁶⁵ 175 Minn. 503, 222 N.W. 285 (1928). See also, to the same effect, *State ex rel. Weaver v. Babcock*, 175 Minn. 590, 220 N.W. 287 (1928).

In *State ex rel. University of Minnesota v. Chase*,⁶⁶ the University of Minnesota contended that it was not subject to the supervision and control of the commission on administration and finance. Article VIII, Section 4, of the Minnesota constitution perpetuated to the university all rights, endowments, immunities, and franchises previously held by it. The specific question which the court had to decide was whether a mandamus should issue to compel the auditor to approve and issue a warrant for the payment of an item of expenditure authorized by the regents of the university. The auditor contended that under the reorganization act his duty was to refuse payment unless the item had been approved by the commission on administration and finance. The court held that mandamus should issue to compel the issuance of the warrant. The university was thereby declared not to be under the control of the commission. The court reasoned that the university is an agency of the state, and is, therefore, within the terms of the reorganization act. The regents of the university had, however, been given the power to govern and control university affairs and had been constituted a corporate body by a territorial statute. This corporate status, with its incidental power of government and control, were perpetuated to the university, that is, to the board of regents, by Article VIII, Section 4, of the state constitution. This power to manage the affairs of the university could not be taken away from the regents by the legislature and placed in the hands of an administrative or executive body such as the commission on administration and finance. The commission, it should be remembered, is only an agency for carrying out the will of the governor under the reorganization act of 1925. That statute attempted to give to the commission some of this power which had been "perpetuated" to the regents. To this extent, the statute was declared unconstitutional; but the statute as a whole was not thereby rendered invalid. All that this case decides, therefore, is that the legislature cannot give to an executive officer or group of officers any of the governing power perpetuated to the regents of the university. The opinion contains considerable discussion as to the relation of the legislature to the university, but this discussion, in addition to being dictum, is confused and difficult to understand. In general, the court seems to suggest that the power of the board of regents is executive in its nature; that this power cannot be taken away from the regents; that the legislature may not by law regulate

⁶⁶ 175 Minn. 259, 220 N.W. 951 (1928).

matters of academic policy or administration; but that the legislature may, in appropriating money for the university, attach certain types of conditions to these grants. The court expressly limits its decision to the precise issue raised by the case, so that the problem of the relation of the legislature to the university under Article VIII, Section 4, still remains to be settled.

*State v. Halladay*⁶⁷ was a South Dakota case involving the governor's power of appointment and the senate's power of confirmation. The appointment was made on July 1, while the senate was not in session, and notice of the appointment was filed with the secretary of state. On January 4, the senate met and a new governor came into office. On January 7, the senate confirmed the appointment which had been made on July 1, the senate having learned of the appointment from the office of the secretary of state. The new governor, in the following December, made a new appointment to the office. The conflicting claims to the office were tested in a quo warranto proceeding. The court held that the office of governor is a continuing one, so that the senatorial confirmation on January 7 of an appointment made by the previous incumbent of the governor's office was valid, and the lack of formal notice of the appointment from the secretary of state was not fatal. The court also held that a statute providing that appointees during vacancies should hold office until the next session of the legislature did not apply to the vacancy in this case.

The Minnesota case of *State ex rel. Putnam v. Holm*⁶⁸ decides that the three days (Sundays excepted) allowed the governor for vetoing bills while the legislature is still in session does not exclude holidays; that only a final adjournment is referred to when the constitution mentions adjournment as preventing a return of a bill; and that the governor need not return a bill to the house in which it originated while the house is in session, but may return it even though the two houses are temporarily adjourned. For purposes of returning bills to the legislature, legislative officers and members alike are agents to whom the governor may give the bill.

*Boykin v. State Highway Department*⁶⁹ illustrates the detailed specifications often imposed by statute on state highway depart-

⁶⁷ 219 N.W. 125 (S. D. 1928).

⁶⁸ *State ex rel. Putnam v. Holm*, 172 Minn. 162 (1927). This case contains a good discussion of cases from other states and distinguishes many of them on the basis of the phraseology employed in the various constitutional provisions governing the veto.

⁶⁹ 144 S.E. 227 (S. C. 1928).

ments. When highways are located by statute, the department has practically no control over the subject and the courts are slow to permit any variation from the routes designated by the legislature.

The Indiana industrial board was denied the power to pass upon the validity of a statute in connection with its work. The court declared that the board is a part of the executive department, and cannot, therefore, pass upon the validity or invalidity of a statute. Any decision of the board on that question cannot be brought up on appeal to a court. The administrative branch of the government should assume the statute to be constitutional until a court of competent jurisdiction has declared it not to be so.⁷⁰

Pardon. The surrender by one state of a fugitive from justice to another state does not constitute a pardon for any crimes which the fugitive may have committed against the laws of the surrendering state.⁷¹ Several conditional pardons came up for review during the past year. In Texas the power of pardon was said in one case to be inherent in the governor.⁷² In New York a conditional pardon was held permissible, but the breach of the condition must be shown before the prisoner can again be committed.⁷³ An interesting condition is that imposed by the governor of Missouri to the effect that the prisoner stay out of a named county.⁷⁴ The Missouri court held in this connection that even though no statutory procedure is provided, the pardoned person is entitled to a hearing on the question of whether or not he has broken the condition. A Texas⁷⁵ case also holds that a hearing must be accorded the pardoned person before he can again be committed for breach of the condition, but that a hearing on habeas corpus is sufficient to fulfill the requirement. The condition imposed in this case was that the convicted person go to an insane hospital instead of to jail. In Oklahoma⁷⁶ it was held that a parole also is an act of grace, and that the governor may order the prisoner committed for breach of condition. The power to pardon was held in Iowa to include the power to suspend sentence, and this function may not be performed by the judiciary.⁷⁷

⁷⁰ *Marmon Motor Car Company v. Sparks*, 161 N.E. 647 (Ind. 1928).

⁷¹ *Ex parte Youatler*, 268 Pac. 423 (Okla. 1928).

⁷² *Ex parte Gore*, 4 S.W. (2) 39 (Tex. 1928).

⁷³ *People v. Jennings*, 248 N. Y. 46, 161 N.E. 326 (1928).

⁷⁴ *Ex parte Strauss*, 7 S.W. (2) 1000 (Mo. 1928).

⁷⁵ *Ex parte Davenport*, 7 S.W. (2) 589 (Tex. 1928).

⁷⁶ *Ex parte Butler*, 269 Pac. 786 (Okla. 1928).

⁷⁷ *State v. Hamilton*, 220 N.W. 313 (Ia. 1928).

4. **The Legislature.** The Illinois reapportionment situation gave rise to another case in 1928.⁷⁸ In *Fergus v. Kinney*,⁷⁹ a taxpayer sought an injunction to stop the payment of salaries to legislators on the ground that they had not been elected from proper districts, because no new apportionment had been made for more than ten years. The injunction was denied, the court holding that while the duty to apportion was mandatory and continuing, the court could not enforce that duty upon the legislature, either by direct action such as mandamus or by indirect action such as injunction. The claim that the legislature which was about to assemble was not a *de jure* body was denied by the court, and was turned back upon the petitioner in the form of an argument for denying the relief asked; for if the legislature did not have proper legal foundations, the lack of those foundations would furnish an argument against compelling that body to pass an apportionment act, its acts not being legal if the body was not legal.⁸⁰

Each house of the legislature is usually constituted the final judge of the qualifications, returns, and election of its own members. This deprives the courts of jurisdiction to try title to a legislative seat on quo warranto proceedings.⁸¹ The courts may sometimes pass upon the qualifications of candidates for legislative seats when the question is raised before the election is held and the individual admitted to membership by action of the legislative body. In Louisiana,⁸² residence in the district from which the legislator is elected is required, but the court held that actual physical presence in the district is not necessary to fulfill this requirement. Due to the force of precedent, the court felt compelled to regard as sufficient the reservation of some rooms in a former home of the candidate elected from the district, even though the house had been sold, and although the candidate had his business in another district and lived most of the time with his family in a city located outside of the district.

⁷⁸ For a discussion of the situation in Illinois, see Mott, "Reapportionment in Illinois," this *Review*, vol. 21, p. 598.

⁷⁹ 333 Ill. 437, 164 N.E. 665 (1928).

⁸⁰ See *Boggs v. Jordan*, 267 Pac. 696 (Cal. 1928), for an attempt to correct the apparent inequalities existing in legislative representation in California.

⁸¹ *Rainey v. Taylor*, 143 S.E. 383 (Ga. 1928).

⁸² *Leopold v. Ninth Senatorial District Democratic Committee*, 8 La. App. 232 (1927). See also *State ex rel. Beck v. Erickson*, 221 N. W. 245 (Minn. 1928), the name of the candidate for the legislature not to be printed on the ballot because he had not lived in the district a sufficient length of time.

The practice of some legislative bodies of voting themselves bonuses has occasionally given rise to litigation. The 1927 legislature of Tennessee voted a bonus of \$750 to each member as "official expenses." While the four-dollar per diem compensation provided for in the Tennessee constitution may cause one to sympathize to some extent with the action of the legislature, the Tennessee court was no doubt quite correct in granting an injunction restraining the payment of the bonus. The sum quite evidently had no relation to actual expenses, and it was a bonus of equal size for all members of the legislature.⁸³ A member of a senate investigating committee in Nebraska was denied compensation for services performed in the capacity of a private accountant for the committee.⁸⁴ The expenses allowed to the members of the committee were all that they could claim in addition to their legislative salaries.

A few cases involving legislative procedure will serve to illustrate the types of situations coming before the courts involving constitutional questions of procedure. In *People v. Guido*,⁸⁵ the California court held that a statute enacted by referendum can later be amended by a statute enacted by the legislature. The Kentucky provision⁸⁶ that no law shall be "revised, amended," or extended by reference to title only, was held not to apply to repeals. In Arkansas, Article v, Section 29, provides that money is to be drawn from the treasury only on a specific appropriation with the purpose stated in the law and the maximum amount specified which may be drawn under the statute. A statute failing to specify the maximum amount was declared invalid.⁸⁷ A Florida case⁸⁸ maintains the view that the court will not go beyond the journal entry to learn whether the reading requirements of the constitution have been fulfilled. In Maryland the legislative declaration that an emergency exists, for purposes of putting a statute into effect immediately, was held to be conclusive upon the court.⁸⁹

Chapter 53, Section 19, of the General Laws of Massachusetts, as amended by Chapter 97 of the Laws of 1925, provides for printing

⁸³ *Peay v. Nolan*, 7 S.W. (2) 815 (Tenn. 1928).

⁸⁴ *In re Wilkins*, 219 N.W. 9 (Neb. 1928).

⁸⁵ *People v. Guido*, 269 (Cal. D. C. App. 1928).

⁸⁶ *Gross v. Fiscall Court*, 9 S.W. (2) 1006 (Ky. 1928).

⁸⁷ *Lepanto Special School District v. Cone*, 5 S.W. (2) 332 (Ark. 1928).

⁸⁸ *Jackson Lmbr. Co. v. Walton County*, 116 So. 771 (Fla. 1928).

⁸⁹ *Culpet v. Commrs. of Chesterton*, 141 Atl. 410 (Md. 1928).

proposed instructions to congressmen on the state ballots. The secretary of state and attorney-general are to draft the proposition in simple terms, and the attorney-general is to determine whether it involves a question of public policy for Massachusetts. The petition proposing the instruction is to be signed by two hundred voters in a representative district, or twelve hundred voters in a senatorial district. The attorney-general decided that an instruction to repeal the Eighteenth Amendment involves a question of public policy for Massachusetts, and could therefore be put on the ballot for approval or disapproval by the voters. The determination of the attorney-general was held to be final under the statute.⁹⁰ In Oklahoma, initiated measures are to be referred to the voters by the governor, and they become law if approved by a "majority of the votes cast in such election." This was construed to mean a majority of the votes cast on this particular question.⁹¹

5. Taxation and Finance. A state constitutional debt limit does not apply where provision is made for a service charge to pay off bonds, and this has been held to be true even though there is a possibility that funds may be drawn from the treasury to pay the bonds.⁹² Article ix, Section 4, of the Pennsylvania constitution, after stating certain restrictions on state debts, provides that "the general assembly, irrespective of any debt, may authorize the state to issue bonds to the amount of fifty millions of dollars for the purpose of improving and rebuilding the highways of the commonwealth." In 1923, one hundred millions was substituted for fifty millions. Bonds to the amount of fifty million dollars were issued in 1918, and in 1923 an additional fifty million. Subsequently, three million dollars' worth of bonds were retired and cancelled. A taxpayer sought an injunction to stop the issuance of three million dollars' worth of bonds to take the place of those retired. The court held that only one hundred million dollars' worth of bonds could be issued. The legislature could not authorize the issuance of the three million dollars in addition to this. The constitution did not authorize indefinite continuance of bond issues for highways. Once the one hundred million dollars' worth of bonds had been issued, the power was exhausted under this provision.⁹³ The

⁹⁰ *Thompson v. Secretary of Commonwealth*, 163 N.E. 192 (Mass. 1928).

⁹¹ *State ex rel. Babb v. Mathews*, 273 Pac. 352 (Okla. 1928).

⁹² *Alabama State Bridge Corporation v. Smith*, 116 So. 695 (Ala. 1928); *Klein v. City of Louisville*, 224 Ky. 624, 6 S.W. (2) 1104 (1928).

⁹³ *Montgomery v. Martin*, 143 Atl. 505 (Pa. 1928).

recent Iowa road bond act was held unconstitutional on several counts, one of the more serious being that provision was not made for paying the debt within twenty years.⁹⁴

An arrangement whereby the board of regents leased university lands to a private corporation, the members of which were composed of university representatives, for the purpose of building dormitories and a university "union," on condition that the buildings, when erected, be leased to the regents with permission to the regents to pay for the buildings out of earnings, was upheld in *Loomis v. Callahan*.⁹⁵ The general credit of the state was not pledged by this arrangement, and therefore the state debt limit was not exceeded. The Texas legislature may authorize the sale of gas and oil on university lands, on the theory that, even though they belong to a permanent school fund, the proceeds of the sale, when returned to the fund, are the equivalent of the oil and gas.⁹⁶ The 1925 legislature in Michigan altered the basis for apportioning the primary school fund to the schools of the state, and the new distribution was held unconstitutional because contrary to Article XI, Section 9, which in the view of the court fixed as the basis of distribution the number of children in the district.⁹⁷ The state board of education in Montana is given general control and supervision over the university and various state educational institutions. This was held not to limit the legislature in making regulations for schools, and Chapter 77 of the Laws of 1917 authorizing school trustees to expend money for transportation of pupils was upheld, the residents of the district being given an appeal from the decision of the trustees to the state board of education.⁹⁸

The state may compensate persons having moral claims against it. So, if individuals borrowed money from the state for purposes of constructing projects under the supervision of state officers, and through the negligence of those officers the money was largely wasted, the state legislature may waive a part of the state's claim against the borrowers.⁹⁹ In a Kentucky case a contractor building a highway under a contract with the highway commission was held immune from suit by a landowner for damages done in the course of construct-

⁹⁴ *State v. Executive Council*, 222 N.W. 737 (Ia. 1929).

⁹⁵ *Loomis v. Callahan*, 220 N.W. 816 (Wis. 1928).

⁹⁶ *Theisen v. Robison*, 8 S.W. (2) 646 (Tex Sup. Ct. 1928).

⁹⁷ *Bd. of Educ. of Detroit v. Fuller*, 242 Mich. 186, 218 N.W. 764 (1928).

⁹⁸ *State ex rel. Stephens v. Keaster*, 266 Pac. 387 (Mont. 1928).

⁹⁹ *Udall v. State Loan Bd.*, 273 Pac. 721 (Ariz. 1929).

ing the highway in accordance with plans formulated by the commission, no negligence on the part of the contractor being shown. The court said in its opinion that if negligence had been shown the contractor would be liable.¹⁰⁰ Occasionally a case arises in which an officer pays out state money under the authority of an unconstitutional statute. Can the state then recover the money from the individual to whom it has been paid? In *State v. Clements*,¹⁰¹ a trial court issued a writ of mandamus to the state auditor to pay a claim. The auditor paid the claim, but subsequently the statute authorizing the payment was declared unconstitutional. A statute authorized suit by the state to recover money wrongfully paid to an individual. The court held that suit could not be maintained by the state under the statute. The trial court had jurisdiction over the parties and subject-matter when it issued the writ of mandamus, and, the writ being fair on its face, the money was properly paid out by the auditor. The fact that the statute was unconstitutional was immaterial, in the opinion of the court, because of the intervening judicial process.

Taxation. The Florida court discussed the distinction between a fee and a tax and held that a fee is a sum required for services, while a tax is a burden or charge imposed to raise money for some public purpose.¹⁰² In Alabama, the collection of tolls for the use of a bridge built by a state-owned corporation was held not to be the equivalent of taxation.¹⁰³ The power of taxation cannot be delegated to an administrative body without any legislative limitation being placed on the rates and amounts which may be imposed by the administrative officials.¹⁰⁴ Absolute uniformity in taxation is not possible, nor is it required by constitutional provisions imposing the rule of uniformity.¹⁰⁵ The legislature may designate dividends from stock as one factor in fixing the taxable value of stocks, classification of stocks on a different basis from other securities being permissible.¹⁰⁶ A license tax on chain stores of fifty dollars for each store, applicable to owners of more than six

¹⁰⁰ *Hunt-Forbes Construction Co. v. Robinson*, 12 S.E. (2) 303 (Ky. 1928).

¹⁰¹ *State v. Clements*, 117 So. 296 (Ala. 1928).

¹⁰² *Flood, etc., v. State ex rel. Homland*, 117 So. 285 (Fla. 1928).

¹⁰³ *Alabama State Bridge Corp. v. Smith*, 116 So. 695 (Ala. 1928).

¹⁰⁴ *Merriman v. Hutchinson*, 116 So. 271 (Fla. 1928).

¹⁰⁵ *Clerk v. City of Burlington*, 143 Atl. 677 (Vt. 1928). See also *Fraser v. Vermillion Mining Co.*, 221 N.W. 13 (Minn. 1928), on mining royalty tax, held uniform; *Porter v. First Nat. Bk. of Panama City*, 119 So. 130 (Fla. 1928); *State ex rel. Mo. State Life Ins. Co. v. Gehner*, 8 S.W. (2) 1068 (Mo. 1928).

¹⁰⁶ *Clark v. City of Burlington*, 143 Atl. 677 (Vt. 1928).

stores, was held invalid in North Carolina.¹⁰⁷ The uniformity rule does not apply to occupational taxes in Arizona.¹⁰⁸ Special assessments and benefits as a basis for them, when determined by direct legislative action, must be very arbitrary before the courts will overturn them; while if they are determined by administrative officers, the courts are not so lenient. This distinction was drawn in the Florida case of *Martin v. Dade Muck Land Co.*¹⁰⁹ In Missouri, a special tax does not come within the rules governing exemption from taxation;¹¹⁰ and in Louisiana it was held that the exemption from taxation of farm products applies only to products in the hands of the producers, not in the hands of the purchasers.¹¹¹

6. Local Government. The complete power of the state legislature over local communities, in the absence of specific constitutional limitations on the particular subject to be dealt with, is illustrated by an Iowa case in which the state legislature was permitted to divert from the county to the state sinking fund interest money paid on county funds.¹¹² An Illinois case upholds the action of the legislature in withdrawing from the local community control over street railways.¹¹³ However, Article ix, Section 28, of the Michigan constitution was held to forbid the legislature to authorize the vacation of alleys by a court on petition of two-thirds of abutting property owners. This withdrew from the city its right to a reasonable control of streets and alleys. No opportunity for hearing was granted by the statute.¹¹⁴

A curative statute establishing a boundary line between two counties is not invalid under Article ix, Section 1, Subd. 3, of the Texas constitution, providing that no territory shall be taken from one county and given to another unless the people of both counties vote on the proposal.¹¹⁵ The attempt, in Oklahoma, to abolish township officers in forty-nine counties, twenty-eight counties retaining them, failed. The statute encountered the obstacle of the special-legislation provi-

¹⁰⁷ *Home Accident Ins. Co. v. Industrial Comm.*, 269 Pac. 501 (Ariz. 1928).

¹⁰⁸ *Great Atlantic & Pacific Tea Co. v. Daughton*, 196 N. C. 145, 144 S.E. 701 (1928).

¹⁰⁹ *Martin v. Dade Muck Land Co.*, 116 So. 448 (Fla. 1928).

¹¹⁰ *State ex rel. Gentry v. Curtis*, 4 S.W. (2) 467 (Mo. 1928).

¹¹¹ *Penick v. Ford*, 116 So. 572 (La. 1928).

¹¹² *Scott County v. Johnson*, 222 N.W. 378 (1928).

¹¹³ *Chicago, North Shore & Milw. Ry. v. Chicago*, 331 Ill. 360, 163 N.E. 141 (1928).

¹¹⁴ *In re Hawkins*, 222 N.W. 108 (Mich. 1928).

¹¹⁵ *Hunt County v. Rains County*, 7 S.W. (2) 648 (Tex. Civ. App. 1927).

sion in the state constitution.¹¹⁶ The California legislature is empowered in Article XI, Section 5, to regulate the compensation of county officers in proportion to their duties, and for this purpose it may classify the counties by population. A statute reducing the compensation of county surveyors in counties of the seventh class from \$2,400 to \$120 per annum is in conflict with this provision, the duties of the surveyor remaining the same.¹¹⁷ A taxpayer in Texas failed in his application for an injunction to stop the division of a county into precincts by the commissioners' court of the county, his contention being that certain road funds would be lost through the proposed districting. The work of the commissioners' court will be presumed to have been done in accordance with law, and it was shown in this case that the new districting would be more convenient for the people than the old.¹¹⁸

C. RELATION OF GOVERNMENT TO THE INDIVIDUAL

1. **Suffrage and elections.** A statute authorizing removal from the registration list of the names of persons who have moved out of the election district, or become disqualified for other reasons, and which provides that notice of the removal be sent to the voter's last address in the district, was upheld in New Jersey.¹¹⁹ An Oklahoma statute authorizing the issuance of a certificate of nomination to unopposed candidates was upheld under a constitutional provision granting to the legislature power to establish a primary system.¹²⁰ A federal district court for Texas sustained a party rule which permitted only white persons to vote in party primaries, the legislature having apparently succeeded in evading the United States Supreme Court decision which held that colored persons could not by statute be excluded from participation in primaries, following the lead of Alabama, Florida, and a few other states.¹²¹ In Rhode Island, a statute providing

¹¹⁶ *Hudgins v. Foster*, 267 Pac. 645 (Okla. 1928); *Roberts v. Ledgerwood*, 272 Pac. 448 (Okla. 1928).

¹¹⁷ *Butler v. Williams*, 270 Pac. 697 (Cal. Dist. Ct. of App. 1928).

¹¹⁸ *Ward v. Bond*, 10 S.W. (2) 590 (Tex. Civ. App. 1928).

¹¹⁹ *In re Freeholders*, 143 Atl. 536 (N. J. 1928).

¹²⁰ *Dancy v. Peebly*, 270 Pac. 311 (Okla. 1928).

¹²¹ *Grigsby v. Harris*, 27 F. (2d) 942 (D. C. Tex. 1928). Commenting on the action of some of the southern states following the decision overturning the white primary law, Professors Ogg and Ray state, in their *Introduction to American Government* (3rd ed., 1928), p. 699: "Not to be frustrated, however, the Texas legislature, which happened to be in session when this decision was announced, forthwith passed a new 'white primary' law giving every political

for a maximum exemption from taxation of \$1,000 for patriotic services was held not to dispense with the necessity of paying personal property taxes one year preceding the election. The voter can avail himself of the exemption so far as the ownership of real estate is concerned, because the ownership of the property, not the payment of taxes, is the operative factor with respect to that qualification. A person whose right to vote in municipal elections depends on the payment of a tax upon property of the value of \$134 may partially avail himself of the exemption, leaving a balance on which he pays taxes equal to this and retain the right to vote for members of a city council.¹²²

2. Freedom of speech and assembly. A New Jersey case¹²³ lays down the test of unlawful assembly as being "a common intent of the persons assembled to attain a purpose, whether lawful or unlawful, by the commission of such acts of intimidation and disorder which are likely to produce danger to the tranquility and peace of the neighborhood, and have a natural tendency to inspire rational, firm, and courageous persons in the neighborhood with well-grounded fear of serious breaches of the public peace." A conviction in a lower court of violating a statute making unlawful assembly a misdemeanor was reversed, because the essential elements of unlawful assembly were not present. Another New Jersey case¹²⁴ held that a city ordinance regulating street meetings by method of police permits was valid, and that the court should not interfere by injunction with the honest exercise of discretion by the police department in granting or refusing to grant permits. A Minnesota decision, now pending before the Supreme Court of the United States, upheld a statute declaring the business of "regularly or customarily producing, publishing or circulating, having in possession, selling or giving away . . . (b) a malicious, scandalous and defamatory newspaper . . . " to be a nuisance which could be abated, and providing that in the abatement proceeding no jury trial could be had. The defense of publishing truth with

party in the state, through its state executive committee, the power to 'prescribe the qualifications of its own members,' and thus to determine 'who shall be qualified to vote or otherwise participate in such political party.' In other words, the less direct, but equally effective, method of handling the matter already in use in Alabama, Florida, and other states was adopted."

¹²² In re Opinion to the Governor, 142 Atl. 372 (R. I. 1928).

¹²³ State v. Butterworth, 142 Atl. 57 (N. J. Ct. of Errors 198).

¹²⁴ Burkitt v. Beggans, 142 Atl. 181 (N. J. Ct. of Chancery 1928).

good motive and for justifiable ends was permitted by the statute.¹²⁵ The two most hotly controverted points in the case are those relating to freedom of speech and press, and jury trial.

3. Imprisonment for debt. Alimony decrees are not debts, according to the courts, and therefore persons guilty of disobeying them may be imprisoned.¹²⁶ The term "debts," as used in this connection, refers to express or implied contractual obligations. Punishment for refusal to obey an alimony decree is based on the violation of "society's law" or a violation of the marital relation, or the alimony is dealt with as part of the property held under coverture. It is immaterial whether the decree be for alimony by installments or in gross.¹²⁷ If alimony is dependent on voluntary contract, however, imprisonment is not permissible.¹²⁸ Inability to pay will usually be sufficient to purge of contempt.¹²⁹ Only willful disobedience of the decree is punishable.¹³⁰

4. Protection of persons accused of crime. A modified Baumes law was held valid in Minnesota,¹³¹ and a statute providing for a life term and ineligibility for parole for persons convicted of felony for the fourth time was sustained in California.¹³² In Texas it was held that the burden is on the state to show that the accused shall not be permitted bail,¹³³ and in California it was held that in case of doubt, the person appearing to be insane, bail should be allowed, because the person could be detained on the ground of alleged insanity.¹³⁴ A number of cases involved the problems presented by double jeopardy, but no new principles were enunciated in them, nor were the situations presented sufficiently significant to warrant detailed attention.¹³⁵

Some of the recent statutes enacted in the interest of reforming criminal procedure in the various states came before the courts for review, and one of the inferior courts of New York sustained a statute

¹²⁵ *State ex rel. Olson v. Guilford*, 219 N.W. 770 (Minn. 1928).

¹²⁶ *Brown v. Brown*, 4 S.W. (2) 345 (Tenn. 1928).

¹²⁷ *Ibid.*

¹²⁸ *Dickey v. Dickey*, 141 Atl. 387 (Md. 1928).

¹²⁹ *Ex parte Frisbie*, 27 Oh. App. 290, 161 N.E. 356 (1927).

¹³⁰ *People v. La Mothe*, 331 Ill. 351, 163 N.E. 6 (1928).

¹³¹ *State v. Zywicki*, 221 N.W. 900 (Minn. 1928).

¹³² *Ex parte Rosencrantz*, 271 Pac. 902 (Cal. 1928).

¹³³ *Ex parte Carter*, 9 S.W. (2) 1107 (Tex. Crim. App. 1928).

¹³⁴ *Ex parte Westcott*, 270 Pac. 247 (Cal. 1928).

¹³⁵ See, for example, *Commonwealth v. Creconan*, 162 N.E. 7 (Mass. 1928); *State v. Williams*, 6 S.W. (2) 915 (Mo. 1928); *Compton v. People*, 268 Pac. 577 (Col. 1928).

of 1925 permitting accused persons to apply to the court to have an information filed against them by the district attorney, the court holding that the privilege of presentment by a grand jury could be waived.¹³⁶ A Nebraska case holds that jury trial in misdemeanor cases may be waived,¹³⁷ while the New Mexico court held that a preliminary hearing prior to formal accusation of persons accused of serious crimes covered in the constitution could be waived.¹³⁸ *People v. Hickman*¹³⁹ involved an important question in connection with a recent California statute permitting the plea of "not guilty by reason of insanity," which admits the commission of the offense. When joined with another plea, the latter is to be tried first, under a presumption of sanity, and then the plea of insanity is to be tried. If the accused is found sane, sentence is to be imposed. If only this plea be used, the question should go to the jury. The court upheld the statute. According to the Louisiana court, a woman is not entitled as of right to have women on a jury before which she is being tried.¹⁴⁰

5. Search and seizure and self-incrimination. A Montana case affirms the doctrine that the search and seizure provision of a state constitution protects persons only against action by state officers, and decides that where the information leading to the detection of a criminal was obtained by an illegal search on the part of a federal officer it is permissible for a state official to use it as the basis for prosecution,¹⁴¹ although the facts of the instant case look dangerously close to the line, because the federal and state officers collaborated almost from the very beginning of the transactions. In Oklahoma a warrant obtained on an affidavit of information and belief is insufficient,¹⁴² while *Mai v. State*,¹⁴³ a Mississippi case, decides that adding the name of the county to the style of the warrant is not fatal. This latter case also holds that probable cause, when adjudicated by the

¹³⁶ *People ex rel. Battista v. Christian*, 224 App. Div. 243, 229 N. Y. S. 644 (1928).

¹³⁷ *Miller v. State*, 218 N.W. 742 (Neb. 1928).

¹³⁸ *State v. Vigil*, 266 Pac. 920 (N. Mex. 1928).

¹³⁹ 268 Pac. 909 (Cal. 1928).

¹⁴⁰ *State v. Dreher*, 118 So. 85, 166 La. 924 (1928), statute providing that no woman shall be drawn for jury service unless she has filed declaration of desire to be subject to such service, the declaration to be filed with a clerk of the district court.

¹⁴¹ *State ex rel. Kuhr v. District Court*, 268 Pac. 501 (Mont. 1928).

¹⁴² *Beaster v. State*, 272 Pac. 391 (Okla. Crim. App. 1928).

¹⁴³ 119 So. 177 (Miss. 1928).

officer issuing the process, is established conclusively as between the defendant and the state, and cannot be inquired into on trial, although it may be so inquired into in a case between the accused person and the complaining party obtaining the issuance of the warrant. The Oklahoma court of criminal appeals also held, in *Rhodes v. State*,¹⁴⁴ that facts stated in positive terms cannot, on trial, be assailed on the ground that they were really based on information and belief. A warrant insufficiently described the premises to be searched in a Texas case. The wife of the owner of the premises answered, on inquiry by the officer, that she had no objection to the search being made. The court held that this did not constitute consent on the part of the absent husband, and that the defect in the warrant could not be considered waived.¹⁴⁵ In this case the court also held that the owner could not object to the search of an adjoining field not belonging to him. As to self-incrimination, the Kentucky case of *Albritten v. Commonwealth*¹⁴⁶ held that taking the stand voluntarily in his own behalf waives the privilege, and that the defendant is open to cross-examination on any fact connected with the charge contained in the indictment, even though it may tend to establish his guilt. In *ex parte Bryant*, one of the district courts of appeal in California¹⁴⁷ upheld a statute making abandonment of family prima facie evidence that it was willful and without lawful excuse, and a New Jersey statute¹⁴⁸ compelling drivers of automobiles to report to the police department any accident in which they were parties was held not to violate the protection against self-incrimination.

In Illinois the decision in *Carden v. Ensminger*¹⁴⁹ holds a court order requiring the production of all books, accounts, and records of sales of named stocks over an unlimited period of time too broad, and therefore an unreasonable search.

The writer has read numerous cases decided during the current year involving the impairment of the obligation of contracts, due process of law and equal protection of the laws, and eminent domain. No new technique seems to have been evolved in them, nor have any

¹⁴⁴ 267 Pac. 490 (Okla. Crim. App. 1928).

¹⁴⁵ *Jordan v. State*, 11 S.W. (2) 323 (Tex. Crim. App. 1928).

¹⁴⁶ 11 S.W. (2) 959 (Ky. 1928).

¹⁴⁷ 271 Pac. 926 (Cal. D. C. App. 1928).

¹⁴⁸ *Rembrandt v. Cleveland*, 161 N.E. 364 (Ohio 1928).

¹⁴⁹ 329 Ill. 612, 161 N.E. 137 (1928).

new general attitudes or legal principles and rules been enunciated. Most of these decisions are of little significance for the student of government. Some of them are of importance to lawyers. They do not justify review, either in broad outline or in detail, in this article; and a random sampling would be of little value.

In conclusion, the writer has been impressed with the generally satisfactory manner in which the cases in state constitutional law have been decided during the period under review. "Reform" legislation met with fairly friendly treatment in several instances. Judicial explanations of decisions continue to be somewhat unsatisfactory, sometimes stating the factors which operate in the decision of the case, but sometimes failing to state all of them or even any of the important ones, and occasionally obviously misstating them. An occasional case illustrates the power of conventionally phrased rules and principles in overriding both lay and legal common sense. Inconsistency and error appear, as usual, much more often in opinions than in decisions. However, the writer is confident that any half-dozen readers of this article would have decided the great majority of the cases alluded to precisely as did the courts, and that they would perhaps have explained their decisions in a manner little, if any, more satisfactory than that in which decisions were explained by judges during the past year.

NOTES ON MUNICIPAL AFFAIRS

EDITED BY THOMAS H. REED

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The Proposed Charter of the Federated "City of Pittsburgh." The proposed governmental unification of the Pittsburgh region, comprising the whole of Allegheny county, Pennsylvania, is from many points of view the most important project in the field of local government in recent years. The events which have transpired since the forceful extension in 1906 of the corporate limits of Pittsburgh to include the city of Allegheny have demonstrated the futility of any attempt at outright annexation in this area. For the past two decades the League of Boroughs and Townships has consistently defeated in the Pennsylvania legislature almost perennial proposals looking toward that end. The inevitability of the consolidation of the entire area for certain purposes has, at the same time, been equally apparent. In an attempt to terminate the periodic struggles between Pittsburgh and the outlying units, the League, under the able leadership of Joseph T. Miller, in 1923 instigated an investigation of the possibility of qualified consolidation—of a unification in which the existing municipalities might retain certain substantial powers of local self-government. Professor Thomas H. Reed, of the University of Michigan, whose research in the problems of metropolitan government has been very extensive, was retained by the Metropolitan Plan Commission as consultant and director of research.¹ A constitutional amendment adopted on November 6, 1928, authorized the legislature to submit to the people a charter establishing a consolidated city and county of Pittsburgh in place of the county of Allegheny, but also preserving the corporate personality and certain enumerated powers of the political divisions of the county.² A draft of this proposed charter was embodied in the Commission's report to the governor on March 5, 1929, and was shortly thereafter introduced in the General Assembly. The charter was passed in an amended form by the Assembly and rejected at the polls of

¹ This body—the Commission to Study Municipal Consolidation in Counties of the Second Class—was appointed by the governor of Pennsylvania under an act of June 8, 1923. *P. L.* 282, p. 688.

² For the text of the amendment, see *Pamphlet Laws of 1926*, No. 2, p. 34; for a brief analysis of the vote, see the writer's "City-County Consolidation in Allegheny County, Pennsylvania," in this *Review*, vol. 23, p. 122 (Feb. 1929).

Allegheny county on June 25. The people of the county as a whole voted approximately two to one in its favor, but an unfortunate provision of the constitutional amendment, inserted by a hostile senator, required for its passage a two-thirds vote in a majority of the 122 units. It actually received such a majority in but 47.

Under the terms of the charter submitted by the Commission, the consolidated city would have exercised all of the powers possessed by the present county of Allegheny and certain others specified in the instrument.³ All other powers were reserved to the individual cities, boroughs, and townships which make up this municipal federation. The plan of government outlined by the Commission, although many of its provisions were altered or omitted by the legislature, is of sufficient importance to political scientists as a proposal for the government of a great metropolitan region to deserve detailed description. The following chart indicates its allocation of functions between the consolidated city and the municipal divisions:

CONSOLIDATED CITY	MUNICIPAL DIVISIONS
1. <i>Finance</i>	
1. a. Power to levy taxes and impose special assessments for the purposes of the consolidated city.	1. a. All financial powers now exercised under the laws of Pennsylvania, or which may be conferred thereby, except the power now possessed by second and third class cities to assess property for taxation.
1. b. Exclusive power to assess persons and property within the consolidated city for purposes of taxation. ⁴	

³ As successor to the county of Allegheny, the consolidated city received all the property, rights, interests, claims, and causes of action now possessed by the county and the directors of the poor of the county, and all works, buildings, and property of the several cities, boroughs, and townships of the county now devoted to the care of the poor, indigent, feeble-minded, and insane. It received also such bridges and streets as might be designated by the consolidated city as through-traffic thoroughfares. It assumed the indebtedness of Allegheny county, and that of the directors of the poor of the county, as well as that of the present city of Pittsburgh incurred on account of the care of the poor, indigent, feeble-minded, and insane.

⁴ Under the Commission's charter, assessors were appointed from each municipal division by a board appointed by the government and the school district thereof, in accordance with the certifications of the department of personnel of the consolidated city. The assessor of the consolidated city prescribed the

1. c. Decision of tax appeals involving adjustments both between individual parcels of property and between municipal divisions.

2. *Health*

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| <ol style="list-style-type: none">2. a. Power to make regulations in addition to and not in conflict with state laws.2. b. Power directly to administer public health functions in municipal divisions without boards of health of competent jurisdiction, and in all cases where conditions endanger the safety of persons residing outside the division. The costs of such administration are to be charged against the municipal division.2. c. Power permanently to assume, with the consent of the people thereof, the administration of health functions in any division or divisions. The costs of such administration are to be charged against the municipal division. | <ol style="list-style-type: none">2. a. Power to make regulations in addition to and not in conflict with state laws or regulations of the consolidated city.2. b. Municipal divisions having boards of health of competent jurisdiction are authorized to administer local health functions in accordance with the above. |
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3. *Welfare*

3. a. Administration of family welfare.
3. b. Care of dependent children not cared for in their own families. Supervision or management of such institutions and homes as are under jurisdiction of any court sitting as a juvenile tribunal.
3. c. Care of aged and infirm.
3. d. Administration of the psychiatric clinic, and institutional care of the insane.
3. e. Administration of correctional institutions, jail, and workhouse of present county, and all other correctional institutions established by law.

standards and rules of valuation, and upon the basis of the returns of these local appraisers made the assessment.

3. f. Conducting of quarterly welfare conferences for the improvement of welfare administration.

4. A. *Planning*

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| 4. a. Full charge, control, and direction of all basic geodetic, topographic, street, and boundary line surveys throughout the consolidated city. | |
| 4. b. Formation and enforcement of a master plan for the consolidated city. ⁵ | 4. b. Formation and enforcement of a town plan not inconsistent with the outlines of the master plan. |
| 4. c. Power to recommend to officials of the consolidated city and of the divisions thereof specific improvements and methods of finance therefor. | |
| 4. d. Formation of regulations for the subdivision of land:
(a) General within municipal divisions having planning commissions of competent jurisdiction.
(b) Detailed as to areas not having such commissions. | 4. d. In divisions having planning commissions of competent jurisdiction, the divisions are empowered to make detailed regulations for the subdivision of land, not inconsistent with the general regulations of the consolidated city. |
| 4. e. Approval of subdivision plats, in addition to the approval of same in divisions requiring such. | 4. e. Approval of subdivision plats within the territory of the municipal division. |
| 4. f. Conducting of periodical conferences of all planning authorities within the consolidated city, and consultation with the authorities of the municipal divisions in the formation of the master plan. | |

⁵ The charter provided that the master plan should include a major street plan, a plan for all bridges, viaducts, and overhead or underground structures, a plan for open spaces, waterways and waterfronts, and a general zoning plan, as well as a plan for the location of public property within the consolidated city.

⁶ The consolidated city had also the power to regulate the erection of fences, signs, billboards, buildings, and structures within three hundred feet of any through-traffic street or county road, provided, however, that in any municipal division having an inconsistent ordinance, the ordinance of the municipal division should prevail.

4. B. *Zoning*

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| <p>4. g. The power to create districts for the purpose of regulating the location, height, area, bulk, and use of buildings and premises in municipal divisions which shall not by 1933 have adopted a zoning ordinance.</p> | <p>4. g. Power to exercise zoning prerogatives enjoyed under Pennsylvania law until 1933. If by that time any municipal division has not zoned, the consolidated city shall zone same.</p> |
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5. *Safety*

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| <p>5. a. Maintenance and control of a small mobile police force of the consolidated city.</p> | <p>5. a. Maintenance and control of local police.</p> |
| <p>5. b. Power to assist the local police of any division upon the request of same. The costs of such assistance are to be borne by the municipal division.</p> | |
| <p>5. c. Power either permanently or temporarily to assume the safety administration of any division, upon the request of same. The costs of such administration to be borne by the municipal division.</p> | |
| <p>5. d. Administration of consolidated city detective bureau. Power to assume detective functions of municipal divisions upon request of same.</p> | <p>5. d. Maintenance and control of local detective bureaus.</p> |
| <p>5. e. Power to make and enforce necessary regulations concerning the control of traffic on through-traffic streets.⁷</p> | <p>5. e. Power to regulate traffic on all except through-traffic streets within the division. Duty to assist in the enforcement of the regulations of the consolidated city concerning through-street traffic.</p> |
| <p>5. f. Power to regulate by ordinance the production or emission of smoke from any source, and the future construction or rebuilding of all chimneys, stacks, etc. Inspectional powers concerning same.</p> | <p>5. f. Power further to regulate not inconsistently with the ordinances of the consolidated city.</p> |

⁷ The consolidated city succeeded to all rights and obligations of the several municipal divisions under all franchises, consent ordinances, or other agreements with public utilities to the extent to which the same related to the portion of the facilities of any public utility company located in a through-traffic street.

- 5. g. Power to make regulations with regard to prevention of fire, and to exercise the functions at present exercised by the fire marshal of Allegheny county.
- 5. h. Power to recommend by ordinance standards for the operation of the volunteer and paid fire departments of the municipal divisions, and to make appropriations in aid of such departments, provided said departments conform to the standards recommended.
- 5. g. Power further to regulate not inconsistently with the ordinances of the consolidated city.
- 5. h. Maintenance and control of local fire departments.
- 5. i. All other safety functions permitted by the laws of Pennsylvania.

6. *Public Works*

- 6. a. Power to create special utility districts within the consolidated city for the provision of utilities affecting more than one municipal division.
- 6. b. Power to acquire facilities, or to contract therefor, for the supply of water to municipal divisions or private distributing companies except in municipal divisions which have not surrendered their powers in regard to water supply.
- 6. c. Power to acquire facilities, or to contract therefor, for the supply of transportation facilities within and without the consolidated city.
- 6. d. Power to designate through-traffic streets to be henceforth maintained by the consolidated city, but not including the cleaning and lighting of the same.
- 6. e. Power to assume, with the permission of the municipal division, the ownership and management of any utility or public work of the same, the indebtedness thereof, and the responsibility for the supply of the service thereto.
- 6. b. All powers relating to water supply at present exercised under the laws of Pennsylvania and not voluntarily surrendered to the consolidated city.
- 6. c. All powers relating to transit at present exercised under the laws of Pennsylvania.
- 6. d. Present powers and duties with regard to all other streets, and with regard to street lighting, street cleaning, sewers, garbage collection and disposal, etc.
- 6. f. All functions permitted under the laws of Pennsylvania with regard to the consolidated city in this charter.

7. *Parks and Recreation*

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| <p>7. a. Power to join with municipal divisions or school districts in the acquisition, improvement, maintenance, and operation of parks, playgrounds, and other recreational facilities.</p> | <p>7. a. Maintenance and operation of local recreational facilities.</p> |
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8. *Public Art*

8. a. Power to control through a central jury all works of art to be erected in public places.

9. *Education*

One of the unusual features of the proposed charter was the establishment of a department of research and information, with a mandatory annual minimum appropriation of twenty-five thousand dollars. The department was placed under the direction of an independent board appointed by the president of the city commission. It was empowered to investigate any and all phases of the governments of the consolidated city and the municipal divisions, and was authorized to require from them annual financial reports in a form prescribed by the department. In this manner an attempt was made to avoid the present general indefiniteness regarding fiscal affairs of some of the governmental units. It is regrettable that this very admirable feature should have been lost. The charter as originally proposed provided for a thoroughgoing personnel service for the employees of the consolidated city, which also was stricken out.

The Commission proposed that the consolidated city should be governed by a board of seven commissioners elected at large, but from districts of which each must be a resident, and a president of the board, elected at large. The president was to appoint, by and with the consent of the commission, all department heads and other officers and boards provided for in the charter. He was to be the head of the administration, and to exercise complete directory and investigative powers. Department heads were to appoint their own subordinates, and dismiss them for cause.

The reorganization of the municipal court was another of the outstanding features of the charter contained in the Commission's report. The present magistrates', aldermen's, and justices' of the peace courts were to be abolished, and replaced by a municipal bench of appointive judges. These judges, numbering one for each fifty thousand of popula-

tion, were to be selected by the county court. Nomination was to be by petition, over the names of not less than five hundred qualified electors. The judges were required to be licensed practitioners before the highest courts of Pennsylvania and to have had experience as justices or in business. Powers regarding organization and procedure sufficiently comprehensive to permit the erection of adequate machinery for the speedy and equitable disposition of small claims litigation were delegated to the court in its collegial capacity. This feature also was rejected by the legislature.⁸

No sooner was the charter made public than the politicians of Allegheny county girded themselves to oppose it. Unable or unwilling to assume responsibility for the outright defeat of a measure which would make Pittsburgh the fourth city in the United States, and faced by the tremendous majority given in Allegheny county to the enabling amendment last November, they bent their energies to securing the excision of the principal reform features of the Commission's document. After a delay of two weeks, the political powers came to an agreement upon a measure which they were willing to support, and which was duly passed by the legislature at this session. They struck out of the charter all reference to the departments of welfare, safety, planning, parks and recreation, public art, personnel, and research and information, and the proposed municipal court. They provided for the continuance of the present county board of commissioners as the governing body of the consolidated city for its first two years, and did away with the provision for a director of finance. As it came out of the senate committee, the bill still provided for the consolidated city and county of Pittsburgh, with powers somewhat expanded over those of the present county of Allegheny. It was still possible for the consolidated city to have a police force and a health department, to create public utilities districts, to have a metropolitan water system, to employ the district system of special assessment, to designate through-traffic thereon. The administrative organization which the original draft of the charter created to care for the exercise of these powers was largely cut away, and that matter was left to the discretion of the board of commissioners.

The charter, as finally amended by the legislature, was good enough really to accomplish a substantial consolidation on the federated

⁸ For a striking commentary upon the reprehensible operation of the present system of small claims courts in Allegheny county, see G. Schramm, *Piedpoudre Courts*, (Pittsburgh, 1928).

plan, and at the same time sufficiently denuded of reform features to placate the politicians of Allegheny county. Fortunately, moreover, it was agreed to continue the Metropolitan Plan Commission for another biennium, with authority to make further recommendations.

As passed by the legislature, the charter went to the Allegheny county electorate on June 25. The Metropolitan Plan Commission supported it, taking the attitude that the acceptance of this entering wedge, in view of the continuation of the Commission and the possibility of future alteration of the charter, was more politic than insistence upon the letter of its recommendation. The charter was supported by the Republican, Democratic, and Independent organizations, by the League of Women Voters, the Chamber of Commerce, the Allied Boards of Trade, and the Building and Loan Associations. It was opposed in the McKeesport section, by the volunteer firemen, by many justices of the peace and aldermen, and by some other minor politicians. Even with the assistance of the Republican organization, the handicap of the requirement of a two-thirds vote in a majority of the units was fatal to the instrument.

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A "P.R."—City Manager Charter for Philadelphia? A few minutes before one o'clock on the morning of March 26 a bill to make the city manager plan, with proportional representation, available for Philadelphia—a measure which for a time seemed to have a good chance of passing—was done to death in characteristic machine fashion behind closed doors in the Pennsylvania senate committee on municipal affairs. So ended the first dramatic chapter of a story of municipal revolt which may perhaps rival that of Cincinnati before it is finished. The backgrounds of the two stories are, in fact, very similar. The Cox-Hynicka machine of Cincinnati was one of the few political organizations which in strength and notoriety vied with the Vare machine and its Philadelphia predecessors. It is chiefly the success of Cincinnati in ridding itself of the domination of its machine with the aid of its P. R.-city manager charter and its transforming what was perhaps the worst-governed to what is probably the best-governed large city in the country that has inspired the new charter movement in Philadelphia.

Last fall, following an outbreak of underworld warfare, a searching grand jury investigation of Philadelphia underworld conditions was

started at the recommendation of Judge Edwin O. Lewis and pushed energetically by the district attorney, former Judge John Monaghan. Gang murders were quickly traced to rivalries in the bootleg business, the enormous profits of which were revealed by bank deposits running into the millions. Next, the flourishing condition of the liquor business was linked with the city police force, members of which were shown to be in possession of unexplained wealth, while others were definitely identified as the receivers of protection money by carefully kept accounts in the offices of bootleggers who evidently regarded themselves as secure for all time. Several high police officials were convicted and removed from office. Meanwhile the investigation began to reach out into the political circles which controlled the police. One member of the state legislature was sent to the penitentiary.

Such conditions had long been suspected, but so long as the Vare organization held together and controlled all the elective and appointive offices, no proof was forthcoming. Undoubtedly the illness of Mr. Vare and the lack of a single recognized leader to take his place had something to do with Mr. Monaghan's unprecedented success in following the trail of graft and crime. Mr. Monaghan's opponents in the Vare machine, of which he had formerly been a part, openly charged that he was using his cleanup as a means of building a new machine in alliance with the real estate magnate, Albert M. Greenfield, and perhaps also Thomas E. Mitten, head of the Philadelphia Rapid Transit Company, and hinted that the exposures did not extend further into political circles because those politicians against whom evidence was found had been forced to sign up under the "new power" instead. Be that as it may, public resentment over the conditions that were exposed by Mr. Monaghan became so powerful that Mayor Mackey was finally forced to replace his director of public safety by Major Lemuel B. Schofield, who was Mr. Monaghan's law partner and first assistant in the probe.

At this juncture the popular demand for a change was turned into more fundamental channels by a suggestion from Thomas R. White as chairman of the Philadelphia Committee of Seventy, an organization devoted to honesty in elections and efficiency in city government, and the initiator of the change to the present Philadelphia charter with its single-chamber council in 1919. Mr. White pointed out that the condition in the bureau of police was only one of many points at which the city government was falling short, and that Cincinnati and other cities had been obtaining relief through the city manager plan with

proportional representation. He promised that if popular response to his suggestion proved sufficient the Committee of Seventy would initiate a movement for a new charter for Philadelphia along the same lines.

The response was immediate. Letters of encouragement poured in from representative citizens, and most of the newspapers said editorially that the possibilities of the idea should at least be explored. Accordingly, Mr. White called together a drafting committee of some twenty-five leading citizens, who, after an evening of discussion with Professor A. R. Hatton, voted unanimously to authorize the preparation of a city manager charter with a council elected at large by proportional representation, to go into effect, if approved by the voters of the city with the permission of the legislature, at the next regular election of the council in 1931. The charter was prepared by the staff members of the Bureau of Municipal Research and the Proportional Representation League, and, with a few minor changes, was approved by a second meeting of the full committee and given to the public. It was not a complete revision of the present charter, but made only such changes as seemed necessary to allow the manager plan with proportional representation to work to good advantage.

The principal changes proposed were as follows: 1. The elective mayoralty was abolished and the administrative duties of the mayor were vested in a city manager, to be chosen by the council from any part of the country "solely on the basis of his executive and administrative qualifications" and retained for an indefinite term, subject to dismissal at any time after due public hearing. 2. The title and ceremonial duties of the mayor, but not the power of veto, were vested in the president of the council, chosen by the council as at present. The new mayor was also to retain powers of appointment and ex-officio offices of a non-administrative nature. 3. The receiver of taxes was taken off the ballot and put under the manager, leaving the councilmen as the only purely city officials to be elected. The city controller and city treasurer, being county officers also, remained elective because of requirements of the state constitution. 4. The councilmanic districts were abolished and the councilmen were to be elected by proportional representation at large on a non-partisan rotating ballot, without primaries. Candidates might be nominated either by petition of 5,000 registered voters who had signed no other petition, or by ten such voters, with a deposit made of \$250, to be returned if the candidate polled as many as 5,000 votes. This would probably have been the

first American use of the deposit method of nomination used so extensively in Great Britain and elsewhere. The usual Hare system election rules were considerably simplified by the use of a fixed quota instead of a fixed number of members. Any candidate who received 25,000 votes (each voter having one effective vote) was to be declared elected, and the council was to consist of as many persons as polled this quota—probably between fifteen and twenty, on the basis of recent elections. The present councilmen number twenty-two. 5. The administration of the civil service was taken from the civil service commission, now appointed by the council, and put under a director of civil service appointed, like other directors, by the manager; but the rule-making and judicial functions of the commission were vested in a commission composed of the director, as chairman, and two associate commissioners, one elected by the council and the other by the employees in the classified service. This arrangement was suggested by the model city charter of the National Municipal League, on which much of the proposed charter is based.

While the charter was being prepared the newspapers conducted an exceptionally fine unsolicited campaign of education. Beginning early in January, immediately after the Committee of Seventy had devoted its annual dinner to a consideration of the manager plan and P. R., the *Inquirer*, the *Public Ledger*, and the *Evening Bulletin* carried front-page reports of the success of the plan in Cincinnati and other cities, while the *Record*, Philadelphia's one Democratic paper, gave strong editorial support, emphasizing the importance of proportional representation. At the same time, important organizations throughout the city started holding meetings for consideration of the plan.

As soon as the drafting committee finished its work a City Charter Committee was organized to marshal public support. Mr. White was made chairman and Roland S. Morris, ambassador to Japan under President Wilson, vice-chairman. Walter J. Millard, field secretary of the P. R. League and the National Municipal League, was brought from Cincinnati to act as field secretary and fill most of the important speaking engagements. The executive committee and council included Judges E. O. Lewis and Lewis H. Van Dusen, former mayor W. Freeland Kendrick, Congressman George S. Graham, former district attorney Charles Edwin Fox, four college presidents, the presidents of most of the important women's organizations, labor leaders, ministers, business men, manufacturers—all together, over one hundred of the city's foremost citizens. A legislative cam-

paign fund of ten thousand dollars was underwritten by Cyrus H. K. Curtis, Edward W. Bok, Samuel S. Fels, Charles J. Rhoads (recently appointed head of the Indian bureau), and seven other persons nearly as well known in Philadelphia. More than half of this amount was subsequently made up by popular subscription.

When it came to getting the bill introduced in the legislature there was more difficulty. The hostility of the Vare organization was to be expected, and at first no one of the Philadelphia delegation was willing to risk his political fortunes as its sponsor. To have the bill introduced by an upstate member was to court almost certain defeat, for the state leaders had announced their adherence to the principle of "home rule"—meaning that in local matters the local members could have what they wanted, even if what they wanted was a denial of home rule to the voters.

On February 4, to the astonishment of nearly everyone, the bill was introduced by Senator Samuel W. Salus, former president pro tempore of the senate and stalwart member of the Vare machine. In a moment, what had seemed for this session a mere educational gesture became a serious political possibility. Senator Salus made no pretense of espousing the bill on principle, beyond saying that he considered it a meritorious measure. He made it the occasion for a vigorous denunciation of Mr. Mitten, Mr. Monaghan, Mr. Greenfield, and Mayor Mackey, and a means of preventing his political opponents from monopolizing the credit for reform measures, but he nevertheless made it clear that he intended to support the bill to the limit. It looked for a time as if the Vare organization, which had just lost control of the Municipal Court, was being pushed hard enough so that it might follow his lead, and that consequently (since Mr. Greenfield also gave indications that he would not resist) the measure might become law with little opposition. Presently, however, Chairman Hazlett of the Republican city committee announced that harmony had been restored within the organization. Just what this meant was not at first apparent; but it gradually became clear that for some reason the Vare forces no longer considered Mr. Greenfield a serious menace. The stock of the manager bill went down.

A hearing, attended by over a hundred Philadelphians, was held at Harrisburg, and the bill was explained by Mr. White and Mr. Millard and defended by prominent business men and representatives of the Central Labor Union, the League of Women Voters, the two organizations of Republican Women, the Democratic Women's

Committee, the W. C. T. U., and several other organizations, and no one appeared in opposition. The *Public Ledger*, the *Evening Bulletin*, the *Record*, and the *Inquirer* carried strong editorials urging the legislature to pass the bill, since it was merely permissive, so as to give the voters a chance to decide the question for themselves. But when the Senate committee on municipal affairs, which includes all eight of the Philadelphia senators, met to consider the bill at the close of the evening session of March 25, it took them just about five minutes to decide that it should not be reported out for a vote.

The division on the bill among the Philadelphia senators was fairly close. Only four of the seven who were present opposed it. Senator Salus and Senator Woodward, the one independent Republican, who had declined to sponsor it because of opposition to the manager plan, supported it on the principle of home rule, and Senator McCrossin, the Democrat who defeated Mrs. Flora Vare for reelection in the Smith wave last fall, took no part in the discussion but was prepared to vote for the bill on the same principle. The upstate senators, however, joined Chairman Aron and the Vare organization majority against the bill, and with enthusiasm. There seemed to be a fear that it might be their turn next (bills to make the city manager plan with P. R. optional for other cities and boroughs were at the moment reposing in the House committee on municipal corporations). And the news of the indictment of three councilmen in Cleveland, even though all three were holdovers from the ward plan, was eagerly seized upon as justification for the action taken.

It is clear that the feature of the bill which caused its defeat was not the manager plan but proportional representation. The manager plan without P. R. would probably have suited the Vare organization very well, for every member of the present council was elected with its endorsement, and the appointment of a manager by such a council would have served to strengthen the organization's control. The effect of P. R. can readily be seen when it is remembered that J. Hampton Moore, independent candidate for mayor, polled about 160,000 votes in the last Republican municipal primary. Those votes, under the proposed new charter, would have elected six independent councilmen out of a total of perhaps seventeen. Add the votes of the Democrats and unattached independents and those of the voters who do not think it worth while to vote under present circumstances, and the possibility of even an anti-organization majority becomes apparent. The present members of the council sit high in

the councils of the party. They were taking no chances on a popular endorsement of proportional representation. All this the leaders of the City Charter Committee understood. A hint from them would doubtless have meant the elimination of P. R., and possibly the passage of the bill. But they were practically unanimous in preferring temporary defeat to such an emasculation of their measure.

There is still a chance that the new charter will be in effect at the next election of the Philadelphia council, and the Charter Committee is laying definite plans to make the most of that chance. There will be another session of the legislature in 1931, and the council election does not occur until the fall of that year. Meanwhile, educational work is going forward steadily and the necessary organization is being built up by neighborhood meetings in various parts of the city. When the next legislators come up for election, the manager-P. R. charter will be an issue they will have to meet before the public. And even before that time the Vare organization, already threatened by dissension from within, will be met at each election by a newly formed independent Republican League, with Thomas R. White as chairman—an organization in which many of the City Charter Committee leaders are taking an active part. Though this group has no formal connection with the Charter Committee, it also is making an issue of the manager bill by urging that an organization which would deny the people a vote on it in the face of so real a demand has forfeited all claim to the people's support. Philadelphia will bear watching.

GEORGE H. HALLETT, JR.

Philadelphia, Pa.

The Cleveland Charter Threatened Again. For the fourth time in about as many years, the city of Cleveland will vote, probably August 20, on proposed amendments to its charter. This will be the third successive attempt to eliminate the manager plan and proportional representation. The first unsuccessful effort, in August, 1925, was directed against proportional representation alone. The present campaign for a return to the discarded system of an elected mayor and a council of thirty-three members chosen from as many wards is the aftermath of a series of revelations and scandals in Cleveland's political life. Wearied by recurrent evidences of malpractice in the tabulation of election returns, and disgusted by the bravado with which the officials charged with the administration of elections flaunted their

Attorney-general Turner then began the prosecution of poll workers, and his successor is continuing it with the aid of local special counsel. After a third trial before a non-local judge, two juries having failed to agree in the case, two precinct officials in the August primary were finally convicted of fraudulently entering names on the poll books, falsifying signatures, marking ballots of absent voters, and other misdeeds. These are the only convictions after seven trials of election workers, the rest of which have resulted in acquittals or jury disagreements. Prospects of success for the attorney-general's office are not encouraging in the remaining two dozen or more indictments.

Meanwhile Ray Miller, three times Democratic candidate for prosecutor, carried Cuyahoga county. The earlier loss of the sheriff's office had broken the Republicans' virtual monopoly, and this defeat threatened the very seat of their power. The city council offered an excellent battlefield for the warrior-prosecutor, eager to test his new implements. Despite the pleas of civic organizations and newspapers, and even under proportional representation, the strong Republican organization had been able to elect, and repeatedly re-elect, to the council persons the nature of whose political activities may be inferred from the following quotations from bulletins of the Cleveland Citizens' League relating to civil service: (1) "Patrolman P. dismissed by director on May 2, 1924, for intoxication while on duty and willful disobedience to orders of a superior officer. Previous record was unusually bad; had been up on charges eleven times in five years; had frequent reprimands and fines for disobedience and neglect of duty; dismissed once before in 1920, but was afterwards reinstated; appealed to the commission through Councilman Thomas W. Fleming, attorney, and on May 26, 1924, the commission sustained the director. But in January, 1925, on request of Mr. Fleming, the case was reopened and the commission reinstated P. as patrolman." (2) "In an examination for stationary engineers in January, 1925, a temporary employee in the service stood seventy-fourth on the list and failed to pass. On the demand of Councilman Liston G. Schooley, chairman of the council finance committee, who threatened to hold up the commission's pay roll, the papers of this temporary employee were regraded, more than six months after the thirty-day period, and he was placed seventh on the list and was duly appointed."

The first of the above references is to the Republican chieftain of the negro voters, chairman of the council committee on fire and police. He has recently been convicted and sentenced for accepting a

bribe to secure disability payments for a policeman injured in line of duty, but the case is being appealed. The second quotation refers to the chairman of the important finance committee, who is now serving a five-year sentence in the Ohio penitentiary for pocketing some \$33,000 out of about \$83,000 involved in a city real estate transaction. Trial of a third councilman resulted in acquittal, and a fourth case has been dismissed by the judge, though the prosecutor threatens to reopen it.

The persons involved in these charges were members of the city council before the advent of the city manager plan, but the incidents have occurred during a manager's administration. That makes excellent campaign material. The general impression that there is something scandalous about the administration of Manager Hopkins is giving unusual vigor to the attack upon the charter, which otherwise might be regarded as a mere chronic recurrence.

Two counter-moves are being attempted: petitions are being circulated by one group for a charter providing for a mayor and council of nine members elected at large by proportional representation, and another faction seeks the election of a charter commission to study the document now in use with a view to its revision. Neither of these propositions is likely to mature in time for presentation simultaneously with the so-called Davis-Downer-Danaceau charter in August.

The political alignment is practically the same as in the previous charter struggles. The Democratic organization will probably oppose the proposed charter. Its women's division has already declared against it. The Citizens' League, the League of Women Voters, the Woman's City Club, and many other civic organizations will also be opposed. Much will depend on the degree of support which the regular Republican organization lends to ex-Mayor and ex-Governor Harry L. Davis, who has not in recent years enjoyed the whole-hearted favor of the Republican leader, Maurice Maschke. In fact, it was the opposition of the regular organization that defeated the Davis proposal in the fall of 1927.

DORIS DARMSTADTER.

Pittsburgh, Pa.

The City Manager Campaign in Toledo. Toledo was faced last fall with a long ballot indeed. The ballyhoo of the national and state campaign, the ease of voting party tickets, the good work done

by some of the organizations interested in the bond issues, and the degree of satisfaction existing with regard to Mayor Jackson's administration of city affairs militated against the success of the manager plan. The complicated nature of the electoral job in Toledo last November 6 is indicated by mere mention of the fact that there were ten ballots containing the names of 230 persons running for fifty-five offices, and, in addition, nine referenda were to be voted upon. In such a maze, the wonder is that Toledo voters were not more confused than was actually the case.

The charter commission elected in the fall of 1927 completed its work on July 30 and voted ten to four in favor of submitting the charter which it had made. The charter provided, among other things, for a city manager and a council elected by the fixed quota modification of P. R. Under this plan, as provided by the charter, 7,000 voters would elect a councilman, with the proviso that at least seven must be elected, and also that when the number exceeded nine the quota, 7,000, must be increased at the subsequent election by 1,000 votes, and so on, always keeping the number between seven and nine.

Early in August a second proposal was brought into the council and approved by it for submission as an alternative. This amendment, some thought, was intended as a red herring, designed only to add confusion to a situation already somewhat confounded. The proposed amendment was the same as the charter commission's P. R. charter except for some minor changes in the sections dealing with special assessments and the civil service provisions, and with the important difference that P. R. with the fixed quota was eliminated. For the electoral provisions of the proposed charter were substituted the ward method of election, one councilman being chosen from each of ten wards, and one to be elected at large. The powers of the manager were somewhat weakened, the budget provisions were not as good, and the powers of investigation of the commission of publicity and efficiency were somewhat abbreviated. Although Mayor Jackson vetoed the ordinance submitting the proposed amendment to the people, his action was voided by the courts. It was charged by the proponents of the P. R. charter that the amendment was submitted at the behest of Walter F. Brown; and members of the council, which is predominantly "organization," deeply resented the mayor's stinging veto message and his rebuke to the council for allowing the submission of the amendment to the charter, which was immediately

dubbed by the *Toledo News Bee* the "Brown-Guitteau" charter.

The P. R. charter fight was made by the organization formed for that purpose, the People's Charter Campaign Committee. A. R. Kuhlman, president of the Chamber of Commerce in 1926, when the fight for better government and the city manager took a new lease on life with the aid of that group, was elected chairman of this new body. George D. Welles, a distinguished attorney, Wendell Johnson, director of the Social Service Federation, and William P. Clarke, labor leader, along with Walter F. Millard, of the Proportional Representation League, were the outstanding champions of the P. R. charter during the campaign. The opposition forces were led by Judge John M. Killits, ably aided and abetted by the *Toledo Blade* and the *Toledo Times*.

The Central Labor Union came out against P. R., and the Polish vote, controlling two out of twenty wards, was almost solidly against the P. R. charter. There were too many things before the people. The fact that a choice had to be made between the proposed charter and the charter amendment (aside from all other issues), the influence and prestige of Judge Killits, and the prevalent satisfaction with the prevailing administration—all doomed the fight to failure. In addition, the fixed quota with a variable council was a vulnerable point and difficult to meet in an entirely satisfactory way in debate. The official count revealed the vote as having been 36,445 for the charter and 52,604 against. The vote on the amendment was even more adverse, 59,232 voting against it, and only 27,634 voting in favor of it.

It may be safely assumed that the fight is not yet over. On November 19 the council was asked to authorize a special election on a new proposal for the city manager and proportional representation. The request was rejected and the movement has apparently died down, although it is rumored that an attempt will be made by the friends of the city manager and proportional representation to have another vote on their plan this fall. It is felt, and with a large degree of justification, that the last election was not a fair test, because the issue was confused. In such a situation the voice of the people is a stammering, incoherent mumbling, and the friends of the city manager with P. R. desire a clearer expression of the people's will.

H. T. SHENEFIELD.

Toledo, Ohio.

NEWS AND NOTES

PERSONAL AND MISCELLANEOUS

Compiled by the Managing Editor

As announced in the May issue of the *Review*, the twenty-fifth annual meeting of the American Political Science Association will be held at New Orleans on December 27-30. Other organizations meeting at the same time and place include the Association of American Law Schools and the American Association for Labor Legislation. Headquarters of the Political Science Association will be at the Jung Hotel. The committee on program consists of Professors Clyde L. King (chairman), S. Gale Lowrie, R. M. Story, Quincy Wright, and Walter F. Dodd, and Colonel A. T. Prescott. A committee to nominate officers for 1930 has been appointed, as follows: Walter J. Shepard (chairman), H. W. Dodds, Isidor Loeb, J. M. Callahan, and Miss Edith Bramhall. When the present issue of the *Review* went to press, the committee on program had made arrangements (subject to later changes, to be announced in the November issue) for (1) general sessions on (a) impeachments and (b) foreign governments; (2) a joint session with the Association of American Law Schools on judicial reorganization; (3) a joint session with the Association for Labor Legislation for the delivery of presidential addresses, and another on administration of labor legislation; and (4) a lengthy list and rich variety of round tables. The following round tables were planned to meet on all three days (the director being indicated in each case): 1. Local Government, C. M. Kneir; 2. Training for Citizenship, Charles E. Merriam; 3. Psychology of Political Types, H. D. Lasswell; 4. Public Personnel Policies, W. E. Mosher; 5. Recent Contributions to Political Theory, Walter J. Shepard; 6. Quantitative Methods in Politics, Stuart A. Rice; and 7. Legislatures and Legislation, A. R. Hatton. A round table on Pressure Groups will deal, on successive days, with legislation, primaries and elections, and the executive, under the direction of P. H. Odegard, J. H. Logan, and E. P. Herring, respectively. Still other round tables, each meeting once or twice, include: 1. Methods of Measuring Municipal Activities, directed by H. W. Dodds; 2. National Administration, by W. F. Willoughby; State Administration, by M. B. Lambie; 4. Fiscal

Problems in State Government, by J. M. Mathews; 5. The Far East, by H. S. Quigley; 6. Russia—Foreign Administration, by S. G. Lowrie; 7. Public Opinion in Government, by W. B. Graves; and 8. Police Administration, by August Vollmer.

Dr. Frank J. Goodnow retired in June from the presidency of the Johns Hopkins University, but will continue to lecture on municipal law.

Professor Francis W. Coker, of Ohio State University, has been appointed Cowles professor of political science in the graduate school of Yale University and will assume his new position this autumn.

Professor Charles E. Martin, of the University of Washington, has been accredited to the universities of the Orient and the Pacific area as Carnegie Endowment professor of international relations. He will arrive in Japan in September and expects to lecture at universities and before various learned societies in that country and China, and perhaps also in the Philippines, Australia, and New Zealand.

Professor Chester Lloyd Jones, of the political science and economics departments at the University of Wisconsin, has been made director of the University's school of commerce. He visited Mexico and other Latin American countries during the summer.

Professor Charles E. Merriam was on leave from the University of Chicago during the spring quarter and was engaged in work for the Rockefeller Foundation in Paris.

On the basis of the new Cowles foundation, Dr. Harold J. Laski, of the London School of Economics and Political Science, will serve during the second half of the coming year as visiting professor of political science at Yale University.

Professor Thomas H. Reed, of the University of Michigan, will be on leave of absence during 1929-30. During the first semester he will act as consultant to the City and County Metropolitan Development Committee of St. Louis, and during the second he will be visiting professor at Harvard University. His work at Michigan will be taken over by Dr. Arthur W. Bromage, formerly instructor at Michigan and Harvard.

Dr. James K. Pollock, Jr., while in England as a fellow of the Social Science Research Council observing the parliamentary election, spoke

before the Royal Institute of International Affairs on "A Comparison Between the English and American Party Systems." Professor Pollock has recently been promoted to the rank of associate professor at the University of Michigan.

Dr. Irwin Stewart, of the University of Texas, has accepted a professorship of political science in the American University, Washington, D. C.

Dr. Herbert W. Briggs, recently acting professor of political science at Oberlin College, has received an appointment at Cornell University.

Professor J. P. Senning has succeeded Dean H. G. James as chairman of the department of political science at the University of Nebraska.

Dr. Joseph S. Roucek, of New York University, has been appointed professor of social sciences in Centenary Collegiate Institute, Hackettstown, N. J.

After fifteen months at the University of Hawaii as acting head of the department of history and politics, Professor William H. George has returned to his regular post as professor of political philosophy at the University of Washington.

Professor Kenneth Cole has returned to the University of Washington after a period on leave at Harvard University. Mr. Granville Hulse, instructor in municipal government at Washington, will return to Harvard to continue his graduate studies.

Professor Harold M. Vinacke has been granted leave of absence from the University of Cincinnati for 1929-30. He expects to spend the year in making a study of political conditions in Austria, Hungary, Czechoslovakia, and Jugoslavia. Mr. J. A. Holliday will give his courses at the University of Cincinnati during the year.

Professor Graham H. Stuart, of Stanford University, gave courses at the University of Southern California in the summer session, and Professor Roy Malcom, of the latter institution, served similarly at the University of Washington.

Dr. John J. George has resigned his professorship of history and political science at Converse College to accept an assistant professorship of political science at Rutgers University.

Dr. George B. Galloway, formerly of the professional staff of the Philadelphia Bureau of Municipal Research, has joined the staff of Editorial Research Reports in Washington, D. C.

Professor B. A. Arneson, of Ohio Wesleyan University, gave courses in the summer session of Miami University, and Professor J. F. Shreiner, of Miami, taught in the summer session at Oberlin.

Professor Kenneth Colegrove, of Northwestern University, will be on leave during the coming year and his courses will be given by Dr. L. E. Egbert, formerly of the University of Illinois.

Professor Walter R. Sharp has secured leave of absence from the University of Wisconsin in order to serve during the coming year as secretary to the Social Science Research Council's committees on fellowships and grants-in-aid. He succeeds Dr. John V. Van Sickle in this position.

Professor Harold S. Quigley, of the University of Minnesota, has been granted a Guggenheim fellowship. He will visit Japan during the coming winter, with a view to completing some parts of his forthcoming book on the government of Japan.

Professor Harwood L. Childs, of Bucknell University, is in charge of an experimental extension course on Pennsylvania state government to be given in the state capitol at Harrisburg during the coming year. The lectures will be given by various state officials.

Dr. Karl C. Leebrick, professor of political science and history at the University of Hawaii, has become dean of the college of liberal arts at Syracuse University.

Dr. Herman H. Trachsel, associate in the department of political science at the State University of Iowa, has been appointed associate professor at the University of South Dakota.

Dr. W. Leon Godshall has been promoted to a full professorship of political science at Union College, and Mr. Harold R. Enslow, of the University of Pennsylvania, has been appointed assistant professor in the same institution in succession to Mr. Albert H. Hall, who has resigned his instructorship.

Dr. James Hart has been promoted to an associate professorship at Johns Hopkins University. During the summer he gave two

courses in political science at the University of California at Los Angeles.

Mr. Paul K. Walp received the doctorate at Johns Hopkins in June and has become an instructor in political science at the University of Kentucky.

Professor C. Walter Young, of George Washington University, will continue his research on the Manchurian question at Johns Hopkins University, where he has been awarded a Johnston fellowship for 1929-30.

Mr. Howard A. Calkins, graduate student at the University of Wisconsin, has been appointed instructor in political science at the University of Texas.

Professor Frank W. Prescott, of the University of Chattanooga, gave instruction during the summer session at North Carolina College for Women.

Mr. Robert Phillips, who received the doctor's degree at the University of Michigan in June, has returned to Purdue University, where he becomes professor of government.

Mr. Rowland Egger, of the University of Michigan, has been appointed instructor in municipal government at Princeton University, and Mr. Harold Dorr has been appointed instructor in political science at Michigan.

Mr. David Hunter Miller, of New York City, has been appointed to the new post of editor of treaties in the State Department at Washington. It is planned to publish authentic texts of all treaties to which the United States has ever been a party, regardless of whether they have subsequently ceased to be in force.

Mr. David Lawrence, editor of the *United States Daily*, announces that, starting in September, that paper will broaden its scope to include the publication of information concerning the work of the governments of the various states. The new material will be presented, not state by state, but topically, under such headings as taxation, public health, education, agriculture, insurance, banking, etc.

Professor Bruce Williams, who, after a year spent as professor of political science at Cornell University, was to have returned to the

University of Virginia this fall, died in Baltimore on July 14, at the age of thirty-seven. He had served the American Political Science Association as a member of its executive council, and also as a member of the board of editors of the *Review*, and he had published, among other things, a noteworthy volume entitled *State Security and the League of Nations*, consisting of lectures delivered at the Johns Hopkins University, on the Albert Shaw foundation, in 1927. Professor Williams had been in failing health for upwards of a year.

Drs. John G. Hervey and Edward B. Logan have been promoted to assistant professorships in political science at the University of Pennsylvania. Associate Professor Austin F. Macdonald has received an appointment as Simon Patton research fellow of the American Academy of Political and Social Science for the year 1929-30 and will make an investigation of municipal airports. Dr. Leland J. Gordon, instructor, has been awarded a Penfield traveling scholarship in international law and relations and will study recent Turko-American trade and political relations. He will spend a year in Geneva, Constantinople, and Angora.

The University of Chicago announces the appointment of Mr. August Vollmer, of the Berkeley police department, as professor of police administration, in the political science department. Mr. Vollmer will direct the research program of the University of Chicago in police administration, will be prepared to serve as consultant on police matters upon request, and will give graduate courses in police work. It is expected to correlate the research work of Mr. Vollmer with that of the Bureau of Public Personnel Administration, the International City Managers' Association, and the political science department in a comprehensive program.

During the recent summer session the University of Minnesota conducted a conference lasting one week on the problems of the small town. Several members of the political science department participated, and a small selected group of economists and sociologists met for a more intensive study of some of the social and economic problems of villages and small cities.

A conference of the League for Industrial Democracy, held at Camp Tamiment, near Stroudsburg, Pennsylvania, in June, was devoted to "a program for municipal government." The program dealt with municipal graft, crime and the city government, municipal

control of public utilities, housing, labor protection, and non-partisan versus partisan elections.

The sixth annual institute at the University of Chicago on the basis of the Norman Wait Harris Memorial Foundation was held June 17-28 and was devoted to problems of population and migration.

The Social Science Research Council's committee on grants-in-aid calls attention to the fact that the closing date for receiving applications for consideration at the November meeting is October 1. Any mature American (including Canadian) scholar of proved research ability in fields falling within the Council's range of interest is eligible to apply. The committee expects that the applicant's project will be well under way, that he can forecast the time and money required to complete it, that the grant is not to be used in fulfillment of requirements for any higher academic degree, and that the applicant has already canvassed the possibility of aid from his own institution. Applications should be addressed to Walter R. Sharp, secretary of the committee, Social Science Research Council, 230 Park Avenue, New York City.

The first American meeting of the Institute of International Law will be held at Briarcliff Lodge, New York, in October. The organization's membership, restricted to sixty active and sixty associate members, is principally European; nevertheless the coming meeting is expected to be largely attended. Dr. James Brown Scott is president. The Fourth Conference of Teachers of International Law will be held in conjunction with the session of the Institute, and the members have been invited to participate in the Institute's proceedings.

At the third annual session of the Institute of Public Affairs held at the University of Virginia in early August, a round table on democracy as operative in America was conducted by Professor Thomas H. Reed, of the University of Michigan; another, on law enforcement, by Professor Raymond Moley, of Columbia University; a third, on problems in contemporary politics, by Professor Walter Starr Myers, of Princeton University; and a fourth, on our Latin American relations, by Professor Clarence H. Haring, of Harvard University.

At the Institute of Politics, now in session at Williamstown, Mass., the foreign lecturers and round table leaders are Professors André Siegfried of Paris, William E. Rappard of Geneva, T. E. Gregory

and J. W. Headlam-Morley of London, Mr. George Young, also of London, Count Giovanni Elia of Rome, and Dean P. E. Corbett, of McGill University. Round table conferences deal with Canadian-American relations, limitation of armaments, post-war constitutional changes in Europe, the interests of United States citizens in Latin America, the effect of public fiscal policies on trade and employment, banking and currency, inter-ally debts and reparations, and trade relations as affected by politics, science, and finance.

The first session of the Institute of Statesmanship was held under the auspices of Rollins College at Winter Park, Florida, during the week of March 25. The program was devoted to a consideration of various aspects of the future of party government in the United States. There were round tables, open conferences, and lectures on party development and methods, political trends in the South, the possibilities of party realignment, and party responsibility. Among those who took part were President H. W. Chase, of the University of North Carolina, Dean Walter J. Shepard, of Ohio State University, Professor Lindsay Rogers, of Columbia University, Professor John Dickinson, of Princeton University, Professor Harold R. Bruce, of Dartmouth College, Professor James K. Pollock, of the University of Michigan, and Messrs. Norman Thomas, Albert Shaw, and Oswald Garrison Villard of New York.

At a joint meeting of five committees appointed by a similar number of organizations to promote the expansion of the publications of the Department of State of the United States, held in Washington on April 26, provision was made for a sub-committee to study the question of a comprehensive publication program, such study to include an examination of the practice of various foreign offices abroad. The committee as appointed consists of Professor Manley O. Hudson, of Harvard University (chairman), Dr. Raymond L. Buell, of the Foreign Policy Association, and Dr. H. Barrett Learned, of Washington, D. C. The American Political Science Association was represented at the conference by Professors Jesse S. Reeves, Blaine F. Moore, and Frederic A. Ogg.

Under the joint direction of Drs. Paul Mantoux and William E. Rappard, the Postgraduate Institute of International Studies (Institut Universitaire de Hautes Études Internationales) at Geneva, established early in 1927, has become an important educational enterprise.

Though coöperating closely with the University of Geneva, the Institute is an independent organization, drawing its financial support from the canton of Geneva and the Swiss Confederation, with aid also from the Rockefeller Foundation. Seminars and courses of lectures are given during the period from October to July, mainly by European scholars, but usually with the coöperation of one or more Americans. During a portion of the year recently ended, Professors James W. Garner, of the University of Illinois, and Ernest M. Patterson, of the University of Pennsylvania, conducted seminars and gave lectures. During the second half of the coming year, Professor Pitman B. Potter, of the University of Wisconsin, will give a lecture course on the fundamental principles of international organization and will conduct a seminar dealing with selected topics in the same field.

The New Jersey legislature has made provision for an extensive survey and fiscal overhauling of the state government, the task to be carried out under the direction of Governor Larson, with the assistance of a special legislative committee. The governor has engaged the National Institute of Public Administration to supply the technical services in carrying on the survey and installation work. Mr. A. E. Buck will have general charge. The projected inquiry is to be much broader than the usual study of this kind. The various departments, institutions, and agencies of the state are to be examined with respect to their organization, personnel, and administrative methods; a thorough analysis is to be made of the existing state tax system and of the miscellaneous sources of revenue; an audit of the general accounts is to be carried out, on the "test check" basis, for the latest fiscal year; a central accounting system is to be devised and installed, embodying methods and procedure for the establishment of budgetary control; and a cost accounting system is to be devised for the charitable, penal, and correctional institutions of the state. A study of personnel and personnel administration has been carried on during the summer by Professor Morris B. Lambie, of the University of Minnesota.

BOOK REVIEWS AND NOTICES

EDITED BY A. C. HANFORD

Harvard University

The American Secretaries of State and Their Diplomacy. SAMUEL FLAGG BEMIS, Editor. J. Franklin Jameson, H. Barrett Learned, and James Brown Scott, Advisory Board. (New York: Alfred A. Knopf.)

- Volume IV. *John Quincy Adams.* By DEXTER PERKINS.
Henry Clay. By THEODORE E. BURTON.
Martin Van Buren. By JOHN SPENCER BASSETT.
Edward Livingston. By FRANCIS RAWLE.
Louis McLane. By EUGENE IRVING McCORMAC.
John Forsyth. By EUGENE IRVING McCORMAC.
(1928. Pp. ix, 392.)
- Volume V. *Daniel Webster.* By CLYDE AUGUSTUS DUNIWAY.
Abel Parker Upshur. By RANDOLPH G. ADAMS.
John Caldwell Calhoun. By ST. GEORGE LEAKIN SIOUSSAT.
James Buchanan. By ST. GEORGE LEAKIN SIOUSSAT.
(1928. Pp. ix, 436.)
- Volume VI. *John Middleton Clayton.* By MARY WILHELMINE WILLIAMS.
Daniel Webster (Second Term). By CLYDE AUGUSTUS DUNIWAY.
Edward Everett. By FOSTER STEARNS.
William Learned Marcy. By H. BARRETT LEARNED.
Lewis Cass. By LEWIS EINSTEIN.
Jeremiah Sullivan Black. By ROY F. NICHOLS.
(1928. Pp. x, 457).
- Volume VII. *William H. Seward.* By HENRY W. TEMPLE.
Elihu B. Washburne. By JOSEPH V. FULLER.
Hamilton Fish. By JOSEPH V. FULLER.
William M. Evarts. By CLAUDE G. BOWERS and HELEN DWIGHT REID.
James G. Blaine. By JAMES B. LOCKEY.
(1928. Pp. ix, 341).

- Volume VIII. *Frederick T. Frelinghuysen*. By PHILIP MARSHALL BROWN.
Thomas Francis Bayard. By LESTER B. SHIPPEE.
James Gillespie Blaine (Second Term). By JOSEPH B. LOCKEY.
John Watson Foster. By WILLIAM R. CASTLE, Jr.
Walter Quinton Gresham. By MONTGOMERY SCHUYLER.
Richard Olney. By MONTGOMERY SCHUYLER.
 (1928. Pp. ix, 367.)
- Volume IX. *John Sherman*. By LOUIS MARTIN SEARS.
William Rufus Day. By LESTER B. SHIPPEE and ROYAL B. WAY.
John Hay. By A. L. P. DENNIS.
Elihu Root. By JAMES BROWN SCOTT.
Robert Bacon. By JAMES BROWN SCOTT.
Philander C. Knox. By HERBERT F. WRIGHT.
 (1929. Pp. ix, 428.)
- Volume X. *William Jennings Bryan*. Anonymous.
Robert Lansing. By JULIUS W. PRATT.
Bainbridge Colby. By JOHN SPARGO.
Charles Evans Hughes. By CHARLES CHENEY HYDE.
 (1929. Pp. ix, 484.)

This series, of which the first three volumes have been noticed previously in this *Review*,¹ is now complete, carrying the accounts of the services of the secretaries of state down to the close of Mr. Hughes's secretaryship in 1925. Volumes IV to X include sketches of forty incumbents of the office between 1817 and 1925. The matter of perspective, to some extent a criterion of impartiality, at once suggests itself, as evidenced by the amount of space devoted to each secretary. Certainly the number of years in office is not determining, nor should it be. Of those who have served over seven years, J. Q. Adams is allotted 111 pages, Forsyth 42, Seward 115, and Hay 74; while of the four-year incumbents, Buchanan is given 101 and Calhoun, with one year, is complimented with 106. Nor are the contributions made by each to American foreign policy the index of measurement. Webster's two years under Tyler receive 64 pages, and to his successor, Upshur, holding the office for seven months, are given 57. Marcy, a four-year tenant, is allotted 149 (the most of any in the whole series),

¹ Vol. 22, p. 202 (February, 1928).

and Root receives 89. All of which merely serves to show the editorial difficulties "among jealous authors" involved in such a series of monographs, which, taken together, go far toward giving an impressive and connected survey of American foreign policy.

The general plan pursued in the first three volumes has been followed throughout the series. To each volume the editor contributes a concise introduction, which usually stresses the more important conclusions reached by the author of each essay. Sometimes the editor manages to sum up a secretaryship with a pregnant sentence, e.g., with reference to Webster: "In foreign affairs as in domestic politics he was advocate and master of humane and sensible compromise" (vol. 6, p. viii). Each author has faithfully undertaken to write a fresh study based upon source materials, usually the State Department archives; yet each has just as faithfully gone through the secondary authorities, many of which are monographs of recent date. All of this is shown abundantly by the generally excellent bibliographical apparatus appended to each study. Typographically, the series is admirable.

When one comes to examine the individual contributions, it becomes difficult, if not invidious, to rate them as to merit. In some cases the study has been entrusted to a scholar who has already made the field his own. This is particularly the case with Professor Perkins's *J. Q. Adams*. It would be difficult to find a clearer discussion of the origin and setting forth of the Monroe Doctrine than here. As to Marcy, Dr. Learned has made a substantial contribution. He has thrown new light upon the Ostend Manifesto and in general gives a picture of Marcy that is decidedly impressive. Therefore one may not cavil at the length of this study, which might have gone somewhat more into detail as to the original terms of the Gadsden treaty, so long held secret by the Department of State. As to the other secretaries, some of them reflect the enthusiasm of the author for the subject. This is particularly so with Mr. Lockey's two studies of Blaine. Intimate association with the subjects has permitted the authors of the essays on Root and Hughes (Dr. Scott and Professor Hyde, respectively) to make authoritative contributions which, while naturally favorable, are not merely laudatory. Sometimes a secretary is portrayed with some brilliancy of style. This is the case with Evarts, done by Mr. Bowers and Miss Reid. Dr. Fuller has made Fish an engaging figure in an exceedingly interesting study.

Perhaps after surveying all of the forty sketches there lurks in the

memory an impression that each secretary has received at least his share of glory, and that some have received a little more than that. Not all secretaries of state have been great men. Some of them have not been competent secretaries. No amount of writing could make Forsyth a great man, Frelinghuysen a great secretary, or Cass a competent one. Nor, may it be suggested, can Bryan be so made, even if served up, as here, anonymously. Frankly, it seems strange that in such a series an anonymous contribution should have been admitted, even if the author be vouched for as having had "unusual access to and intimacy with the sources of that politician's years as secretary of state," as the editor informs us (vol. 10, p. viii). Even so, he reveals little.

In the notice of the first three volumes it was suggested that frequently one is in the dark as to just what is the "diplomacy" of the particular secretary of state and what is the foreign policy of the president under whom he served. Working out the respective contributions of each, Professor Perkins has been unusually successful in doing this with J. Q. Adams. So has Dr. Learned with Marcy, Senator Burton decidedly less so with Clay. In treating Cass, Mr. Einstein frankly avows that Buchanan was largely his own secretary of state, while Sherman is a pathetic figure, in which McKinley and Day overshadow the subject. Professor Dennis's treatment of Hay is admirable, but, as he has abundantly shown elsewhere, Roosevelt determined foreign policies in many matters of vast importance.

Space forbids more extended treatment of the various essays. The series as a whole is excellent. One feels, now and then, the need of such a corrective as Garner's *Foreign Policies of the United States*. Certainly, to understand the foreign policy of the nation one must study other characters in addition to the titular heads of the departments. The Roosevelt and Wilson administrations are perhaps the best examples of this. But the designers of the series set their own task—to bring into strong relief the secretaries of state. This has been done creditably, and the series will be found indispensable to the student of American foreign policy and to the general reader.

University of Michigan.

JESSE S. REEVES.

Canada and the United States: Some Aspects of the History of the Republic and the Dominion. By HUGH L. KEENLEYSIDE. With an Introduction by W. P. M. Kennedy. (New York: Alfred A. Knopf. 1929. Pp. xvii, 396, xlii.)

Empire and Commonwealth: Studies in Governance and Self-Governance in Canada. BY CHESTER MARTIN. (Oxford: Clarendon Press. 1929. Pp. xxi, 385.)

Canada in the Commonwealth: From Conflict to Coöperation. BY RIGHT HON. SIR ROBERT BORDEN. (Oxford: Clarendon Press. 1929. Pp. xii, 144.)

These three books have authority and a certain unity. The first two are based upon thorough research in manuscript material, the third is a summing up by a former prime minister of Canada of its course of development from petty colonial status to political equality with Great Britain in which, by consent of all concerned, and especially of Great Britain, the self-governing dominions are, with Britain herself, "autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs." Today, as Mr. Keenleyside says, Great Britain would be as likely to send political orders to Paris or Washington as to Ottawa.

Mr. Keenleyside's account of the relations of Canada with the United States covers friendly relations and great and minor causes of difference, and their number and variety will surprise some readers. British Canada was first peopled chiefly from the United States: Nova Scotia, New Brunswick, and Ontario by Tory exiles at the time of the Revolution, and later both Ontario and the West by settlers. Canada is the only country to which there has been a migration of population from the United States. The movement in the other direction has been, of course, more extensive since the middle of the nineteenth century, but today, while about a million Canadian-born live in the United States, nearly four hundred thousand American-born live in Canada. Probably the exchange tends to favor Canada. She sends chiefly laborers seeking employment, while the United States sends chiefly farmers with some capital.

The author notes, one by one, the causes of friction in the past. From the first, "Manifest Destiny" caused many enthusiasts in the United States to claim the whole continent. This was the chief cause of the war of 1812; it stirred active sympathy in the United States when, in 1837-38, Canada was menaced by civil war; it had some share in causing the House of Representatives to protest in 1867 at the federation of Canada as a violation of the Monroe Doctrine; and it led to extravagant claims in disputes about frontiers.

Of more moment is the triumph in both countries of good sense in every crisis, and one chief result of Mr. Keenleyside's thorough research is to show that, in the main, justice was done. He has, however, no high opinion of the capacity of Oswald, who, in 1783, might have done better for the Canada of the future in the peace, nor of Roosevelt's methods in regard to the Alaska frontier. But settlements of disputes softened hostility, and it is probably true today that no other nation in the world is more deeply friendly to the United States than Canada. Canadian statesmen are not disturbed by flamboyant claims in the press to moral superiority compared with other nations; by shouts of "We Won the War;" or even by severe tariff burdens imposed on Canada's trade by her only neighbor. Canada, indeed, gets a certain comfortable complacency in observing the relatively smooth working of her British parliamentary system compared with the frequent strife between the executive and the legislative power in the United States and the paralysis of foreign policy by the power of a minority in the Senate to reject treaties. Mr. Keenleyside's book is impartial, the style is good, and the research so thorough that his notes form an adequate list of authorities. Some minor errors, such as "Goldwyn" Smith, Lord "Shelbourne," and "Sir" John Simcoe, should be corrected in a new edition.

Professor Martin's book covers three successive phases of evolution: the first British Empire, all but ended by the American Revolution; the second Empire; and its passing into the third phase of a Commonwealth of Nations. The only British legislature in North America to survive the American Revolution is that of Nova Scotia, and two of the six long chapters deal with its growth into control of its own affairs. The chapters on "The Old Colonial System" and "New Subjects in Quebec" are fully documented and form a valuable addition to the literature of the American Revolution. In his discussion of the origin of the Quebec Act, Professor Martin controverts two views long current in British circles: one, that it was a successful *eirenicon* to the French population; the other, that it was not inspired by any desire to coerce the colonies in case of need. Many quotations show that Sir Guy Carleton, from his first days as governor of Canada, intended, if the need should come, to use Canada as a basis to coerce Boston. Long before war broke out, he planned so to unite Quebec and New York by forts as to drive a wedge between New England and the other colonies and thus prevent their common action. His influence in shaping the Quebec Act was kept secret and

remains so, but Professor Martin shows beyond doubt the coercive purpose of his policy, which justifies in part Alexander Hamilton's rather hysterical fears for liberty in the colonies. Carleton was a good general, but his lack of political insight is proved by his absurd plan to depend on the recently conquered French Canadians for military aid.

Professor Martin's two concluding chapters explain the older Canada's passage from colonial to dominion status and liberty, and also some anomalies in the present British Commonwealth. The Parliament of Great Britain still has, over the whole British Empire, the supremacy challenged at the time of the American Revolution. This is useful in law, while at the same time Parliament legislates for the dominions only as a *deus ex machina*, at their request, a truly British compromise.

Sir Robert Borden's book consists of his Rhodes Memorial Lectures at Oxford in 1927. They include a rapid sketch of the history of Canada, but their special interest is in Chapters x to xiv which cover the "bloodless revolution" from colony to nation. As prime minister of Canada, Sir Robert Borden shared in making the treaty of Versailles. His insistence upon the recognition of Canada as a full nation in the same sense that Great Britain is a nation startled both France and the United States, but he gained his point. There are touches of quiet humor in his story of the awakening from "dreamland" in official circles. As a result of his firmness, Canada now sits as an elected member of the Council of the League of Nations, and in the absence of the United States really represents North America in the League's work.

GEORGE M. WRONG.

University of Toronto.

Rivalry of the United States and Great Britain over Latin America, 1808-1830. BY J. FRED RIPPY. (Baltimore: Johns Hopkins Press. 1929. Pp. xii, 322.)

These Albert Shaw Lectures deal with a theme which has often been handled at Johns Hopkins since Professor Latané delivered his pioneer course in 1899. There has been an immense accumulation of material on this subject since that date, and particularly on the period which Professor Rippy has chosen. It is only natural, therefore, that, despite the obvious care with which he has combed the archives of the State Department and the Foreign Office, there is nothing very new or

startling in the material which he submitted to his hearers. Nevertheless, he has made a distinct contribution to our knowledge of the period.

The book is about the rivalry of the two countries, and naturally that rivalry is stressed rather than the common interests of both. Their agents in Central and South America did, indeed, often indulge in a rivalry which was generally futile, sometimes comic, and, on the whole, largely without influence on the course of events. Few were men of much discretion or intelligence. The Americans were apt to be amateurs, with all the amateur's desire to enhance his own importance, while the British were generally men of no great standing in their profession. Hence an inevitable and unedifying series of reports to both Washington and London and silly contests for prestige and influence. Occasionally these had some effect on the commercial interests of the two countries, but for the most part these interests were determined by large causes over which the diplomats had no control.

Most of the book is based on the reports of the agents. It is only occasionally that their chiefs in London and Washington pay much attention to the complaints and plans. The duels between Castlereagh and Canning and Adams have been so much discussed on both sides of the Atlantic that Professor Rippy, perhaps naturally, passes them over rather hastily, and the result is that the main lines of policy are blurred. The plan of establishing monarchies in South America was buried in the grave of Castlereagh, and both the Monroe Doctrine and Canning's famous boast were merely diplomatic statements which had no great effect at the time. Nothing, indeed, could be made clearer than the insignificance of the Monroe Doctrine during this period; while such plans as existed in South America for the establishment of monarchy received no encouragement in Britain, either from Canning or from his successors. Professor Rippy stresses the attempts of the United States to associate the new countries with the American attitude toward maritime rights. But these had little importance in the main issue, and only rarely did they give much concern to statesmen at home.

The truth is that Professor Rippy, like many other historians, is apt to exaggerate the importance of South American policy in the relations of the two countries. British statesmen thought of it but rarely and Americans only occasionally. Even in this period, Britain had begun to make that distinction between the Caribbean and the

rest of South America which was gradually worked out during the century, and which serves perhaps as the key to the problem. Both sides were cautious to the verge of pusillanimity. Neither followed up high-sounding words with action. This last statement is particularly true of the United States, and the Panama Congress shows how near the ridiculous always was to the sublime. Professor Rippey has hardly appreciated the great merits of American diplomacy, else he would not have hazarded, even in a qualified sense, the statement that "for the period and events treated by the volume here presented the record of the United States has in it something of the heroic." It is just because American statesmen, and especially the greatest of them all, avoided the heroic, while not despising heroics, that they obtained all that was essential without incurring any unnecessary risk.

University College of Wales.

C. K. WEBSTER.

A History of Political Thought in the Sixteenth Century. BY J. W. ALLEN
(New York: The Dial Press. 1928. Pp. xxiv, 525.)

This is an altogether admirable book. The author takes us through all the varied, changing political thought in the sixteenth century, in Germany, England, France, and Italy. He seems to have read, not, of course, all that was written on political theory—that would be impossible—but a vast deal more than is ordinarily read by students who are trying to understand the political thought of the sixteenth century. Only a specialist in the same field could review this book adequately. An amateur in the subject like myself can only record the impression it makes on one. This is that here is a man who reads all the authors for himself, looks at them with his own eyes, and has tried first of all to understand them, to see what they aim at, and not to use them to point morals or enforce existing theories or to fit into some prearranged scheme. Particularly striking in this respect are the accounts of Bodin and Machiavelli. The exposition is illuminated by the author's shrewd, dry comments. He says himself in the introduction that if he has written the book as he should have written it, none will be able to say what his own opinion is on any of the questions discussed, or whether he has one. It is perhaps the prevailing error of the author to think that; but he certainly lets us see enough of his rather sceptical mind, of his hatred of what he calls loose generalizations, and his demand for clear and definite statements, for us to know a good deal of his likes and dislikes.

Admirable as Professor Allen's account of his numerous writers is, the book as a whole raises some interesting questions. He does not really think that there is such a thing as "the political thought of the sixteenth century." He thinks that there were a lot of people who thought about politics and the state, who believed, as some people say, propositions to be true about the state. He is almost as convinced as any Marxian that political ideas are the "ideological reflection" of economic or social circumstances, though nothing would induce him to describe his belief in that disgusting language. His scepticism, in short, has an admirable effect in preventing him from putting these words in other people's mouths, but it makes him deny the existence of the man for the time. "My thought and your thought and his thought, however flatly contradictory, if taken together, actually make up modern thought;" and again, "the political thought of a period is to be found rather in the writings of obscure or anonymous persons than in the work of writers whose real distinction and originality makes them untypical." That last sentence is such a paradoxical statement that it will not really bear examination. For the last part of it really implies that there is no such thing as "the political thought" to be found anywhere.

In spite of all this, Professor Allen thinks that there are in political theory certain fundamental questions which are asked at all times, though in different forms, and which none ever succeeds in answering, though he never says what these questions are. All political theory is reflection on society and political relations, things constituted by men's actions and attitudes, and it is very difficult to understand how there could be unanswerable questions in regard to it.

This sceptical attitude is a welcome reaction from the view that there is such a thing as *the* theory of the state, a body of doctrine true and applicable at all times and under all conditions, to which different political theorists have made specific additions—a view which assumes, for example, that if Aristotle and Hobbes differ in any particular, one of them must be wrong. But it is surely a reaction too far in the other direction.

Greek political theory is surely not just the remarks of Plato plus the remarks of Aristotle about the state, plus the remarks of the Sophists and the *obiter dicta* of Thucydides and Euripides and the rest. It is the theory of the understanding reflection on the Greek city state, expressed in Plato and Aristotle better than anywhere else, but nowhere expressed completely. This is the sort of vague

idea which Professor Allen dislikes, but which we are to suppose the political theorist is trying to achieve. Is he not concerned with trying to understand something that exists—the city or the state—and does he not find that this object of his exists in so far as men think and act in certain ways and believe certain things to be right and obligatory?

The theorist who is trying to understand the state is studying, not abstract obligation, but a regard for obligation, superior duties which make law and social relations possible. This network of superior rights and obligations which makes law and politics possible differs at different times and depends upon historical circumstances; but, although because of this there is no such thing as a theory of the state, there surely are theories of types of state, and the great writers are more worth studying than the small ones because what we want to understand is the thought which makes the state at any time what it is, and to that the great writers give better expression than the others.

If Professor Allen were writing about the seventeenth century, this, or something like it, would have been obvious. But the sixteenth century is a century of transition from one kind of state to another. The assumptions of the medieval state were breaking down, the new ways of thinking about social relations which were to produce the absolutist state of the seventeenth and eighteenth centuries were just coming into being, and such a thing as a theory of the state was not really possible. All we learn (and that is a great deal) is a most various questioning of old assumptions and all kinds of new beginnings which are going to make possible a theory of the state in the next century. What we want to learn about such a period is the way in which the new conditions actually struck all kinds of people, and that Professor Allen gives us to perfection. It might perhaps have been better to leave it at that, instead of quarreling with what are, after all, Professor Allen's *obiter dicta* on political theory in general. But those are so challenging that it was difficult to avoid saying something about the questions they raise.

A. D. LINDSAY.

Oxford University.

State and Sovereignty in Modern Germany. BY RUPERT EMERSON.
(New Haven: Yale University Press. 1928. Pp. xi, 282.)

In Germany the jurist occupies a position of far greater importance than in any of the Anglo-Saxon countries. "The jurist in high places," Emerson points out, "must be at once philosopher and political theo-

rist, as well as student of law and laws." This accounts for the fact that in Germany works on the theory of the state and on constitutional law are hardly distinguishable, and that "if one would seek works on *allgemeine Staatslehre* . . . one must look primarily to the jurists."

In the historical introduction the author traces German political reasoning from Frederick the Great's lofty idea of the state to the communist or pluralist doctrines of Marx and Engels. Without predilection or aversion for any particular theory, Emerson tries to see, to understand, and to be fair in presenting what he has thus seen and understood. With a sympathetic touch, he endeavors to demonstrate the element of determinism in the relation of political reality and theory. Speaking of Humboldt's attempt to limit the omnipotence of the state, he reminds his readers that "the day of individualism was passing rapidly with the French nation, led by Napoleon, sweeping across Germany." He realizes that "if it had been possible up to that time virtually to ignore the state as an historical reality . . . , it was no longer possible when, for lack of a state, the German nation had become the plaything of imperial Napoleon."

In the chapter dealing with the German Empire of 1871 and its jurists he shows how the appearance of the new Imperial constitution marked a definite beginning of a new school of jurisprudence. "The era of natural law which preceded the French Revolution found its antithesis in the era of positive law which followed the founding of the North German Confederation and the proclamation of the Empire five years later. Kant, Hegel, Savigny, Stahl, and Bluntschli may be taken as representative figures of the juristic thought of the first two-thirds of the century; after 1871 they were replaced by a new school, at the head of which stood Paul Laband, at once the most able and the most rigid exponent of its principles."

In the succeeding chapter the author concerns himself with the jurists' attempts to solve the complicated problem of modern federalism, and with the reaction to the positivist school as manifested in the endeavor to establish in its place a pure theory of law, which in turn led to the conception of sovereignty without independence and to the theory of supremacy of international over municipal law as propounded by the writers of the Viennese, or Austrian, school. It is indeed a trifle venturesome for Mr. Emerson to include the writers of the Viennese school in a book on German political or juristic thought. The Austrians, as he is well aware, are prohibited by international law from being Germans. Still, the authors of this inhibition are likely

to be kept too busy with the problems of minorities and disarmament to take cognizance of the infraction of their command.

Consistent with his method, Emerson offers us in his last chapter, not an interpretative study of the Weimar constitution, but an objective presentation of the conflicting views concerning the state character of the *Reich* and the *Länder* and the location of sovereignty within the respective units. While it is true that German jurists still make use of the term sovereignty, it is nevertheless important to stress the fact that the republican national constitution does not once employ the term. It speaks of *Staatsgewalt*, which, like the word *Staat* itself, denotes something essentially practical and realistic. In German republican jurisprudence the concept "state" signifies nothing more nor less than the whole German people organized in a body politic for the protection of their social interests against disintegrating influences from within or without. *Staatsgewalt* is the authority or competence delegated by the consent or will of the people to the government thus charged with the task of effecting that protection. As the constitution states, *Staatsgewalt* emanates from the people, i.e., the people politically organized in a group or body, which we have come to call the state. Those who still operate with "the purely juristic concept," sovereignty, are simply using a formula chosen for want of a more fitting term to cover rather concrete questions such as the location of the ultimate decision in matters of dispute between the individual and the group, between *Reich* and member states, between industry and labor, between church and state, and the like. One can therefore heartily agree with the author's concluding statement, to wit: "... Beneath the theoretical glamour of the problem there is concealed always a significant element of political reality." To the question: Is a *Land* a state?; "the answer will be theoretical and essentially fruitless." But to the question: Is Bavaria a state or a province?, "the answer may be not without weighty political consequences."

In his conclusion the author compares the futile struggle for theoretical sovereignty between the central and component states of the *Reich* with the general relations of the nation states of the world, adding a final plea for the recognition of the sovereignty of a world federation in which the present nation states will occupy a position similar to that held today by the commonwealths of the British Empire or the German *Reich*. Contrasting the conclusion with the rest of the book, one cannot escape the feeling that the finale has been

attached in the fashion of a liturgical appendix. But if conclusions such as this tend to increase the chance of realizing the universal hope for a world federation as described therein, let us by all means welcome such conclusions wherever they appear. For in the prayer for an eventual control of each and every predatory state, no matter how powerful, by an effective world organization, we readily join, even though we may prefer different methods of achieving such a result.

As a non-German historian of German political and juristic thought, Emerson is superb. So deeply has he entered into the spirit of his German originals that they seem to have considerably influenced his terminology and style. To those who are already familiar with at least the fundamentals of German political philosophy, the book will offer pleasurable and profitable reading. In the interest of international understanding, we need more works of this kind.

JOHANNES MATTERN.

Johns Hopkins University.

Éléments de Droit Constitutionnel Français et Comparé. BY A. ESMEIN. Eighth Edition, by HENRY NÉZARD. (Paris: Sirey. 1927. Two volumes. Pp. xliii, 648; xv, 725.)

This work, well known to scholars for more than thirty years, has earned an increasing reputation. Although Esmein was no mean political theorist, his favorite and more successful method was historical. The first of these two volumes, entitled *La liberté moderne: Principes et institutions*, is one of the best available general studies of the historical development of modern political institutions. The second volume, which treats of *Le Droit constitutionnel de la République française*, is, as the title indicates, an intensive study of the government of France. Here theory and history play their part; but the treatment is mainly descriptive.

The present editor, who is dean of the faculty of law at Caen, has loyally preserved both the general plan and the actual text of Esmein's last edition. His main purpose is to bring the book down to date. Additions and corrections he encloses in brackets and inserts in the earlier text. This scattering of M. Nézard's contribution tends to hide its very considerable importance. Whoever examines it carefully will find himself wishing that the editor would add to his long list of published studies a comprehensive treatise of his own on the existing problems of actual French government.

M. Nézard sees these problems and sees them in their relation to the wider problems of all modern democracies. How, he asks, shall we secure in our governing class the requisite technical competence, and how shall we place in their hands the instruments appropriate to their calling? He has little confidence that the suggested limitations on universal suffrage will facilitate their task. Proportional representation tends to aggravate the splintering of parties, and, consequently, to hamper the formation of the majority governments desirable in parliamentary states. It also fosters verbosity and disorder in the representative chambers. Professional representation is equally untrustworthy. Even a successful experience in commercial and industrial affairs is not an adequate preparation for dealing with affairs of state.

What the French government especially lacks is ministerial stability. A publicist of note has suggested that in order to secure this stability Parliament should elect the ministers, or at least the president of the council, for a definite term. This plan, however, if it could be made to work at all, would merely increase the dependence of the ministry upon the chambers. What is needed is just the opposite—not the further unification of governmental powers, but greater equilibrium among them. The chambers in France are already too strong, and even their standing committees are grasping control over the ministry and forcing the resignation of ministers.

The most hopeful remedy would seem to lie in the possible development of the power to dissolve the Chamber of Deputies. At present this power is in abeyance, because of the disrepute attaching to its exercise in 1877, and of the unfortunate constitutional requirement that the assent of the Senate must be secured. If the Senate consents to a dissolution and the deputies of the old majority are returned, the Senate appears to have been condemned by universal suffrage. If the old majority is not returned, its members will seek revenge at the next senatorial elections. The Senate is naturally reluctant to approve dissolution. The president should be able to dissolve without its consent. If his position needs to be strengthened in order to support such a power, the electoral college which chooses him might be enlarged beyond the boundaries of the two chambers.

Thus M. Nézard skirts the most critical of all the problems which confront the student of French government and politics, the problem of ministerial instability. Why do Frenchmen crumble into the small groups whose quarrels wreck ministries? Is it true that France has

suffered specific and tangible disadvantage from the frequent changes of ministry under the Third Republic? Is there, rather, as many French publicists hold, a positive advantage resulting from the ease with which parliamentary majorities form and dissolve? Why should new issues not disclose new cleavages in the chambers? Is there any tendency among the existing groups to coalesce? Can strong ministries be secured in the absence of the two-party system? If not, how can a division into two parties be promoted? These questions are yet to be definitely answered, and they are questions vital not only to French government, but to parliamentary government everywhere.

H. A. YEOMANS.

Harvard University.

L'Organisation de la Justice à l'Usage des Gens du Monde. By LOUIS GENSOUL. (Paris: Librairie de la Revue Française. 1928. Pp. 231.)

This book describes in a beautifully clear and simple manner the organization and work of the French judicial system. The author has had many years of experience as attorney, prosecutor, and judge, and consequently is able to illustrate his description with a number of interesting episodes from his professional career. In the preface we are told that the book was inspired by the persistent questions of a hostess in Algeria, a pleasantry which is maintained in the succeeding chapters and gives opportunity for delightful flashes of humor. In view of the author's splendid style and his accurate insight into the working of the tribunals, it is unfortunate that he should have limited himself to description of the ordinary courts, civil, criminal, and commercial. The value of the book would have been tremendously increased had he included a discussion of the "conseils de prudhommes," the juries of expropriation, and, above all, the administrative courts.

The task which M. Gensoul sets himself is to explain rather than to criticize. The only features of the judicial system which evoke adverse comments are the railroading of cases in the police tribunals and the malfunctioning of the jury system. With respect to the latter, the author, in spite of an obvious attempt to do so, is quite unable to restrain his indignation at the lack of intelligence, independence, and ability which the jurors display. He cynically observes, however, that it is useless to speak of the jury's abolition, and he fears that even his modest suggestions for the modification of the commissions charged

with establishing the jury lists and the reduction of the size of the jury have only slight chances of adoption.

An important feature of the book is the space given to the work of the too often neglected assistants of the court. The discussion of the procedure and jurisdiction of the various tribunals is excellent, but it would be merely the roughest outline without the vivid descriptions of the court chambers, the robes worn by the participants, and particularly the functions and professional organization of the various officers of the court such as the *avocats*, *avoués*, *huissiers*, *procureurs*, *greffiers*, and *juges d'instruction*. The description of the French process of indictment is particularly clear and valuable. These features make the book an unusually valuable contribution to our understanding of the judicial process. It should be read by every teacher of comparative institutions, not only for the information contained, but also for the breadth of view and manner of treatment. It should certainly be on the reading list of every student of comparative government.

RODNEY L. MOTT.

University of Chicago.

Staatseinheit und Föderalismus im alten Frankreich und in der Revolution. BY HEDWIG HINTZE. (Stuttgart: Deutsche Verlags-Anstalt. 1928. Pp. xxx, 622.)

This book is important, in the first place, because it presents a searching and minute study of the Revolutionary idea of federalism, that *ignis fatuus* which tainted with unpopularity everything with which it became associated, from republicanism to the Girondin party. Madame Hintze handles deftly her three reins: federalism as a philosophical concept in the current thought of the eighteenth century; administrative decentralization embodied, before 1789, in the provincial assemblies and, after, in the departmental governments; legislative decentralization, the tenuous but tremendously important indications of which excited wildest fears of national dissolution. She does not tire herself or her reader with any Pickwickian investigation of what was federalism and what was not. She merely assumes that all was not federalism which bore the name, that the word might attach itself to any movement which suggested disunion. Speaking strictly, there was no federalist party in the French Revolution—that is, no party which openly advocated dividing France into eighty-three federated republics. But there were plenty of jealous lovers of union who kept watch

for signs like astrologers of old and were willing to read in every slight step toward devolution a plan for establishing federation in France. And so through the calumny of their opponents, rather than through any program of their own, the title of federalist came to be ascribed to the Girondin party.

The book is not, however, the mere pursuit of a wayward idea peregrinating through a decade of strife, for the very reason that federalism itself is only one aspect, one incarnation, of a problem ever recurrent in French history—that is, the problem of preventing over-centralization. The federalists of the Revolution would have applied the extreme remedy of dividing sovereignty between the state and the local unit. But this was only one solution. Before federalism was thought of, and long after it had ceased to be thought of, reforming Frenchmen were concerned with decentralizing the administrative system. The hated intendant of the old régime yielded his place to the provincial assemblies; during the Revolution the assemblies gave way to departmental bureaus possessing something like administrative autonomy; then, after the pendulum had swung, under the stress of war and the genius of Napoleon, toward unified executive control, the old agitation against the ministers at Paris was revived and partially recognized by laws passed under the Second Empire and the Third Republic. The most recent attempt at devolution is regionalism, whose advocates desire a vague cultural separateness; theirs is rather a spirit than a project.

The controversy over federalism was a pivotal point in the struggle between centralization and decentralization. The Revolution was the period in French history when all centrifugal and centripetal forces were in action. The need for unity was paramount; the response, rapid, spectacular, almost universal, symbolized by the embraces of the populace in their “festivals of federation,”—those “festivals of the general will.” But in contrast to this unity, so vitally important particularly after the outbreak of war, there lingered a persistent distrust of the central government. The people had too lately leashed one tyrant to be willing to install another. Their distrust was reflected, among other places, in the constitution of 1791, awarding almost complete administrative autonomy to the departmental governments; and in the constitution of 1793, which would have provided for twenty-four executives to be appointed from a list submitted by the departments. Such manifestations of an urge toward decentralization became associated with another and quite different urge, that

of the departments to prevent the Paris government, particularly the Commune, from usurping the authority legally granted to the national legislature. Both tendencies were dubbed federalism; and with that magic word Danton and Robespierre succeeded in blackening the name of republic, for during the early years of the Revolution republic was thought to mean federation. With the same word the Mountain besmirched the Girondins, both before the 31st of May and after, when the Girondins, having been ejected from the National Convention, fled to Calvados and Bordeaux and organized a departmental guard to regain their legal position.

The Girondins themselves protested that federalism was a myth, a "moral monster sprung from the head of a delirious scoundrel." However true this may be, at least two things are certain: that time and time again during the French Revolution a desire for some kind of devolution made itself apparent; and that echoes of federalism resounded in the nineteenth century, notably in the writings of Proudhon and in the Commune of 1871.

HELEN I. SULLIVAN.

Ithaca, New York.

Belgian Problems Since the War. BY LOUIS PIERARD. (New Haven: Yale University Press. 1929. Pp. x, 106.)

This volume, to which Émile Vandervelde, the great leader of the Socialist party in Belgium, has contributed a foreword, contains the lectures delivered by M. Pierard at the Williamstown Institute of Politics in 1928. The first chapter is devoted to a discussion of the "Flemish question," with particular reference to the intellectual difference between Walloons and Flemings. In the second chapter the author presents a subject in which he is personally deeply interested, namely, that of the use of workers' leisure time.

The remaining four chapters are given over to a discussion of the structure, principles, and activities of the *parti ouvrier belge*, or, as it is popularly called, the "P. O. B." These latter lectures contain much that is interesting concerning what from many points of view can be said to be the most remarkable of political parties. More significant than the details as to the origin, membership, and vast coöperative enterprises of the P. O. B. is the point of view of Belgian socialism which is implicit in M. Pierard's words. M. Pierard himself is a fine example of the charming and brilliant "intellectuals" who have been largely the directive influence in the P. O. B. He is an artist-writer-

politician, a combination sufficiently rare in the United States. His Williamstown lectures were less an attempt systematically to present facts than to interpret and explain a situation the general outlines of which are tolerably well known. This book will well repay the reading of anyone who is interested in Belgium, socialism, social reform, or political parties. The P. O. B. is undoubtedly the best organized political party in the world, being directed by men of exceptional attainments who have known how to remain revolutionists in theory and reformers in practice, and at the same time how to retain the unflinching support of the proletariat. It is this dramatic pattern which M. Pierard has artistically embroidered in his little volume.

THOMAS H. REED.

University of Michigan.

Citizenship and the Survival of Civilization. BY SIR GEORGE NEWMAN.
(New Haven: Yale University Press. 1928. Pp. 254).

The 1928 series of Yale Lectures on the Responsibilities of Citizenship ranks high in a series that has always been marked by unusual standards of excellence. Taken as a whole, there is no series of publications that has contributed so much toward an understanding of that much-used and little-defined term "citizenship" as the lectures given each year under the auspices of Yale University. Some of the ablest and most civic-minded thinkers of England and the United States are found in the roster of the series. Bryce, Root, Taft, Hughes, Wallas, and Jacks are on the list. By his recent contribution, Sir George Newman deserves a place in this honored group. He speaks not alone as a thinker but as a doer as well, because he has long occupied a place of distinction and influence in one of the most influential bodies in modern government, the ministry of health in England. He writes as both a practical administrator and a scholar, one trained in the fine traditions of British scholarship in the fields of history and political philosophy.

In the early chapters of *Citizenship and the Survival of Civilization* the author reviews the development of the civic idea from the Greeks, who aimed at the good life for an exclusive group of citizens, to modern times, when citizenship embraces the wide brotherhood of man. He pays tribute to Plato and Aristotle for having conceived of the state as the ultimate form of human association, one which comprehended all other forms to the end that men might live and might live happily. To them, Athens was for the Athenians an education in itself, a veri-

table school of citizenship. But in spite of the emphasis on the identity of the good of the individual and the good of the state, the latter is the end "which alone gave value to all lesser ends."

For fifteen hundred years and more, yes even in modern times, the state remained the end, not merely the means to a fuller life for its citizens. In this respect, the Greeks, Machiavelli, and Treitschke are akin. Nowhere has the doctrine been more consistently adopted than in the teachings of Treitschke and the practice of Bismarck. In this respect, their position is the antithesis of the modern position in which the state has become the means to an end, the end being man and the children of man. With "the people as the legislator," in Burke's phrase, and with the well-being of people as the all-sufficient goal, the state becomes a "*moral organism*."

The Greeks' conception of citizenship is not so different from the modern conception, according to our author, except that the loyalties and responsibilities of today are so much more comprehensive. In neither is the citizen merely a "political animal." In both he is a man with duties toward himself as an individual, called upon to perfect himself physically, mentally, and spiritually; he is also a member of a family with a wide range of duties; he has further obligations to his set, his college, his work-mates, his employer; out of these grow public duties to his village, his county, his nation, and the world of which these are a part. Taken all together, these constitute a series of "diverse loyalties, always overlapping and sometimes conflicting, concentric circles impinging on each other or overlaid, with man himself as their one and only center and with citizenship the common denominator." Interdependence and responsibility are the key-notes of this citizenship.

The gradual growth of this conception is traced through the changes in philosophy and thought and the influences of outward events. Hedonism and utilitarianism, individualism and collectivism, morality and religion are given due consideration, particularly as they developed on English soil. The outward events that supplemented and expedited the thought of the times were four in number: the industrial revolution, which placed economic interests at the helm of the state; scientific knowledge, with its emphasis on law, order, and purpose; the growth and expansion of politics, bringing in its trail social reforms and a new appreciation of international relations; and, finally, the humanitarian movement that found its chief source in the prevailing religious spirit. Through such influences the theory and practice of

the political state was supplanted by the civic ideal of a cultural civilization in which ethics, morality, altruism, and sacrifice have become dominant factors—a civilization which in very truth takes *man himself* as the measure of all things.

In outlining the implications of good citizenship in this view of the state, Sir George Newman practically identifies, as did Aristotle, the good citizen with the good man. He substitutes for the earlier duty of defending the state the duty of serving it creatively and productively in everyday affairs. If, for instance, business is to be good business, the good citizen will conduct it in all of its ramifications as a public service. In the words of the author, "To work toward the practice of good and sound commerce, medicine, law, education, literature, art, is good citizenship; to create or produce conditions of life conducive to human association, welfare, and integrity, to justice, and equity for all men, is good citizenship; to advance the development of mankind, the concord of nations, and the emancipation of the imprisoned splendors of the soul, this is also good citizenship" (pages 48 ff.). In other words, to the author the life of the good citizen in its whole range and in all of its phases is permeated with and animated by devotion to public service.

The second half of the work deals in a practical way with the "disharmonies" of the body and the mind, as well as of the body politic, with reference to the possibility of a cultural civilization. Special consideration is given to the ravages of disease, physiological and mental, the causes of premature deaths, and the ways and means of producing sound minds in sound bodies. Attention is then turned to a program of internationalism which has as its aim an internationally-minded citizenship. A special section is devoted to the reorganization of industrial life in which quality of production, loyal coöperation between management and workers, low prices, and high wages are stressed. This is followed by a section on social insurance, which is looked upon as a striking object lesson of the reality and method of the new concept of the cultural state in operation.

The final chapter has to do with education in citizenship. This begins with physical nurture and the training of social impulses and ends with the education of the adult, who should find in education the means and inspiration to a fuller life and understanding. In the formal schooling, intelligence is stressed as preferable to knowledge; practical affairs are to be given a large place, because the school is but a vestibule school for the world in which the scholar is to live; the

development of a sense of communal responsibility, both within and without the school walls, is to receive appropriate emphasis; finally, sportsmanship and the fruitful use of leisure form an important part of the program.

Sir George Newman has made a notable contribution to the literature on citizenship. In defining it, he has proved himself to be historian, philosopher, and practical idealist. In analyzing its implications, he is a constructive and challenging realist. If his conceptions were once wrought into the *mores* of his own people and ours, permeating their whole behavior, not only would Western civilization be revolutionized, but the Christian ideal of peace on earth and good will to men would become the purpose and end of all statecraft and of all economic and social forces.

WILLIAM E. MOSHER.

Syracuse University.

The New Citizenship. BY SEBA ELDRIDGE. (New York: Thomas Y. Crowell Company. 1929. Pp. viii, 357).

Professor Eldridge's *The New Citizenship* is in part a critique of civic education in the United States, and in part a program for the reform of such education. Starting with the thesis that the "sine qua non of competent citizenship is a continuous, intensive, systematic study of citizens' problems by the citizen himself," the author elaborates an optimistic program for the reconstruction of American citizenship. Taking issue with the proposition of Mr. Lippman that the public is a mere "phantom public," incapable of deciding issues on their merits, he visualizes an expansion of the public's ability to judge public questions through the development of primary group organizations wherein citizens will meet face to face for the discussion of fundamental social, economic, and political problems. Such primary groups, organized locally and federated together into state and national organizations, would be composed solely of those fitted for citizenship—an intellectual elite capable of understanding and profiting from such discussions. The new citizens so organized would express judgments on civic questions, select agents for the execution of policies, and participate directly in the performance of civic functions. The author feels that a qualified citizen should spend about four hours daily in study or discussion under the guidance of primary group leaders. Pursuing a systematic course of study which would include a general orientation course in the social sciences, followed by more

specialized instruction, reigning types of individualism and group centrism would be killed off, the "work conception" of welfare would be exterminated, and the handicraft idea that citizenship is merely a residual interest would be destroyed.

Professor Eldridge's criticism of current civic education goes to show that the failure of popular government, evidenced by declining interest in politics, the domination of parties by professional politicians, and the cultural lag in social progress is due very largely to certain hereditary and environmental factors capable of modification. "The community is constituted," he states, "as regards its personnel, by citizens with interests canalized, limited, and largely monopolized by groups other than the community as such." Disparaging the civic utility of attempts to reduce non-voting, introduce the short ballot and proportional representation, realign political parties, or promote freedom of discussion under an existing propaganda régime, he finds a possible panacea in serious, continuous, progressive study of public questions largely by means of expertly directed discussion groups. It is principally because of the failure of social service agencies, the family, community organizations, existing types of adult education, the church, the press, and political parties to provide the necessary antidotes for prevailing civic poisonings, that stress is laid upon the need for a courageous experiment in primary group training.

For many readers *The New Citizenship* will raise more questions than it will answer. That is its merit. What reasons are there for believing that more generalized study and discussion will generate wisdom in solving great social questions? How is an "ethical sanction of good citizenship" going to be developed to give the needed driving force to the suggested procedure? How will primary groups be financed? What reasons are there for supposing that "political cleavages" will not appear within the primary groups? How will the proposed educational program be correlated with our present educational system, or is the latter to be scrapped? How can selective citizenship tests be invented and applied? Where can the requisite number of primary group leaders be recruited? These and many other questions do not seem to be adequately answered by the author. The important problem of civic education as it relates to the desirable rule of the citizen in the modern state remains unsolved, although *The New Citizenship* proposes an experiment that may be worth trying.

HARWOOD L. CHILDS.

Bucknell University.

Die Masse und Ihre Aktion; Ein Beitrag zur Soziologie der Revolution.
By THEODOR GEIGER. (Stuttgart: Ferdinand Enke. 1926. Pp. viii, 194).

This little book seems to me a very important contribution to our political-social literature, though outside of Germany it is not yet sufficiently recognized. The author combats the looseness of the terminology concerning the meaning and significance of mass phenomena. He demonstrates the confusion created by such writers as Le Bon, Sighele, and others who do not discriminate between the various and varied species of mass manifestations, but treat very often as one and the same thing such heterogeneous combinations of individuals as an accidental street gathering, a chance mob uprising, a theatre crowd, a parliamentary body, an ecclesiastical gathering, or a consciously revolutionary mass. Mr. Geiger emphasizes the necessity of a differentiated study of all these manifestations, and devotes the greatest part of his essay to an analysis of the revolutionary mass as the most important phenomenon in the period of social crises.

It has become almost a custom to regard the rule and action of the masses as belonging exclusively to the field of social pathology, as an entirely useless and irrational outburst of popular passions aroused and led by unscrupulous demagogues. This attitude of despising or ridiculing the actions of the revolutionary masses is vigorously repudiated by Mr. Geiger, who in many instances shows the inadequacy of the analysis of Le Bon, Sombart, and other exponents of a haughty intellectualism. It is true that the aim of the mass is always anarchy, but its very function consists, according to the author, of the elimination of petrified social structures which make a new and more reasonable equilibrium of social forces impossible. Therefore, the mass cannot be regarded as a bundle of wild animal instincts, but sometimes is a necessary instrument of social evolution in the interest of a higher supra-individual logic.

This conception diminishes the importance of the leaders of the masses. The leader "does not determine behavior of the mass, but he is a leader because he more sharply accentuates the behavior of the mass." The mass does not receive a will or the purpose of a will from its leader; its activity merely becomes more intensive and more pointed because of him. Political clubs and sects which pullulate in revolutionary periods are not the real sources of the revolutionary mass movement, but only reservoirs of potential mass leaders. It is similarly erroneous to speak of the contagion by which revolutionary masses are

created. The mass is always the primary thing. Contagion is only a consequence of it. To speak of a "mutual contagion" is nonsense. What certain writers denote by this unclear term is simply the accentuation of tendencies already existing. "Mass suggestion" does not mean that something is suggested to the mass, but that a certain suggestion emanates from it. In this way the author sees in the mass a kind of social protest against the over-mechanization of institutions which have lost their real function.

Though the author's analysis is sometimes biased by his sympathy with Marxist socialism, one cannot deny that his book is a necessary antidote to many hasty hyper-intellectual generalizations.

OSCAR JÁSZI.

Oberlin College.

The Structure of Politics at the Accession of George III. BY L. B. NAMIER. (London: Macmillan and Co., Ltd. 1929. Two volumes. Pp. xiv, 290; vi, 291-616).

There are three theories about English parliamentary life in the eighteenth century. The first is that it was a battle between two parties, one high-principled and the other dangerous to the empire-that-was-to-be. The second is that it was a scene of unparalleled corruption. The third is that it was much like any other period in the life of any parliamentary nation, except that politics were a little more based on personal interest and a little less concerned with principle than we like to think they are today.

The first of these theories, that of the old-fashioned Whig (or Tory) and imperialist historian, and the second, that of the social historian, are alike denied by Mr. Namier, who nevertheless gives a good many examples of what we ordinarily call bribery and corruption. Mr. Namier holds the third theory, and to illustrate it he presents us with over five hundred pages of discussion, learned, super-documented, and to two classes of readers fascinating: to those interested in the political history of England, and to those interested in the methods of the art of politics, methods which perhaps have not changed much since the days of Bute and Newcastle.

The book is divided into sections. Under two headings, Mr. Namier studies the types of members of Parliament in the eighteenth century, with specific examples. He studies also, first, the constituencies as a whole, and then typical constituencies, namely, the Cornish boroughs, Shropshire, and two "treasury boroughs." He centers his investi-

gation around the general election of 1761, of which likewise he gives a special study. And finally he takes up thoroughly the question of the secret service money, with the intention of proving that it is not true that the king and his ministers bought majorities with money.

The general conclusion which the reader inevitably draws from the book is that the political situation was one in which public and private, personal and official, royal, ducal, and popular interests were intermingled. The peculiar value of the book is its display of specific facts, and its astonishingly vivid series of pictures. The work exhibits all the learning and intelligence characteristic of the Oxford don who honestly and wholeheartedly devotes himself to the study of politics. The only regret of the student of contemporary governments must be that such English elections as those of 1918 and 1924 have not been studied in the same way.

E. P. CHASE.

Lafayette College.

The Government of Japan. BY NAOKICHI KITAZAWA. (Princeton: Princeton University Press. 1929. Pp. xiii, 130).

This little handbook of twelve brief chapters, plus a brief bibliography, an appendix reprinting the Japanese constitution, and an index, is the product of a seminar in comparative government at Princeton University. Its character would hardly suggest its source, since the book is not an intensive study, but, as its author says, "a pen-picture in broad outline" (p. vii). It sets forth the salient provisions of the constitution and explains them clearly, and it introduces a number of enlightening but mainly *ex cathedra* statements upon governmental practices and tendencies. The author exhibits real knowledge of his country's government, though the value of his explanatory remarks is diminished by their brevity. Throughout, comparisons with features of other governments are suggested, but without the analysis of contrasts that would render them enlightening. Japanese authorities are cited. But references to such sources as government documents, court decisions, parliamentary debates, newspapers, or research dissertations are extremely scant. There is no attempt at criticism, either of institutions or of their expositors.

Mr. Kitazawa begins by pointing to the remarkable unity of the Japanese people, which he finds to be breaking down under industrialism and democratic ideology. He continues with a chapter on political history in which the reader is left uncertain as to the effect of the es-

tablishment of the constitution upon clan government, an uncertainty which the remainder of the book fails to dispel. In a chapter on the constitution, monarchism, constitutionalism, and unitarianism are held to be distinguishing traits. Chapter iv attempts to explain the undoubted distinction between the "Emperor" and the "Throne," an extremely difficult undertaking toward which the author's analysis, if not wholly clarifying, is a contribution. The cabinet is found to be responsible, politically, to the Diet; but unfortunately no effort is given to an exposé of the political forces that play between the two organs. The membership of the lower house is misprinted as 446; it is 466 (p. 73). Although "nobody can deny that the House of Representatives plays a predominant part in politics" (p. 73), it is allotted only two and a half pages. The chapter on the Diet's powers is quite satisfactory as a formal statement, as are those that follow on the judiciary, local government, and parties.

Mr. Kitazawa expresses in his preface the hope that his book "will make some contribution to the furtherance of a true understanding of the Japanese nation." Granting his sincerity and that of many other Oriental students of their own institutions, their published efforts, while valuable, frequently hardly reach the desired goal. The reason may be the pronounced tendency of Oriental students to express the letter only, leaving out the spirit of their institutions. It may be an inferiority complex that induces the presentation of aspects believed likely to please, the omission or glossing over of others. If either of these tendencies exists and thus operates to obscure the full light of fact and criticism which Oriental scholars may cast upon Oriental government and politics, it becomes the first duty of their colleagues and advisers in Western countries to persuade and instruct them toward a more realistic exposition of their subjects.

HAROLD S. QUIGLEY.

University of Minnesota.

American Press Opinion: Washington to Coolidge. BY ALLAN NEVINS. (New York: D. C. Heath and Company. 1928. Pp. xxviii, 598).

News is an extremely perishable product. The events which newspapers feature from day to day fade with astonishing rapidity from the public mind. To newspaper men this is both a godsend and a grievance—for while they know that, the public memory being short, they will not be held to strict account for what they say, they also know that day after tomorrow no one will care a fig for what they say today.

What is true of news writers and reporters is even more true of editors. "The editor," says Professor Nevins, "no matter how distinguished, writes in water, his page is a palimpsest, on which he expends all his talents, wit, learning, and judgment for the day alone, to be erased with the next sun." Occasionally a phrase, an epigram, or a slogan will endure, but these represent only a pitifully few marching spirits of countless editorial bodies mouldering in the grave. Every well-informed American is familiar with the names of Greeley, Dana, Bennett, Raymond, Bowles, Godkin, but few today ever read their editorials. Every child knows William Cullen Bryant, the poet, but few have ever heard of Bryant, the editor. To rescue the editorial writing of these men from oblivion is a commendable undertaking, and Professor Nevins and his publishers deserve a vote of thanks from all students of American history and government for doing so.

Let no one get the impression that this book is a mausoleum for moribund ideas. No more vitally interesting reading has come to my notice. There are not ten dull pages in the entire book. Persons not entirely deficient in a capacity for enthusiasm or indignation will feel their pulses quicken and their spirits rise upon reading Hamilton's attacks on Jefferson, Bache's denunciations of Washington, Bryant's damning of the Dred Scott decision, Greeley's "Prayer of Twenty Millions," and Henry Watterson's "Vae Victis."

Not the least important and valuable portions of the book are Professor Nevins' brief introductions to the various sections, and his footnotes giving the historical facts necessary to an appreciation of the editorial. This book will not be a best seller, but it deserves to be, for there is no more valuable exhibit in print of the "American mind in action."

PETER H. ODEGARD.

Williams College.

The American Experiment. BY BERNARD FAÿ, in collaboration with AVERY CLAFLIN. (New York: Harcourt, Brace and Company. 1929. Pp. viii, 264).

This is not a book of any great importance, or of the same type as M. Faÿ's *Revolutionary Spirit in France and America*. The book-stalls have, of recent years, been glutted with studies, good, bad, and indifferent, of American civilization, among which the works of André Siegfried and the Beards are of outstanding merit. The present work lacks even the profundity which characterizes Mr. Waldo

Frank's brief study; it is the result of collaboration and is uneven, and the historical chapters, while popular, do not avoid being dull. In the latter half of the book, M. Fay's Gallic wit takes the lead. "The editors of the *New Republic* are worthy and legitimate successors of Tom Paine. Their doctrines are those of the so-called radicals—urban laborers, farmers of the Northwest, some professors and students . . . and a number of women of the world." . . . "After Versailles, the Americans retired to their tent, opening a flap from time to time to call out precise though disinterested advice in a loud voice." The book has a thesis, which is that of Kudenhove-Kalerghi, of Alfred Weber, of Riou and Romier—the need for Europe to unite in order, in the words of Herr Stresemann at Locarno, that it may not lose that position, as a consequence of the war, which is its by tradition. The federation is apparently to be leavened by a few young Catholic aristocrats with a Mussolinian contempt for democracy as their chief qualification.

The book is more interesting as a study of the French than as a study of the Americans. What, apparently, M. Fay sees in America is an Anglo-Saxon civilization moved by a passion for unity and uniformity, which are achieved by the individual finding an intoxicating sense of power through mergence in the mass, and distrustful of thought for its own sake as a disintegrating influence. M. Fay's attitude toward his own picture is the every-day European reaction. The united Europe, it seems, is to learn unity from America, but to preserve its own variety and fertility of genius.

One's first temptation is to query M. Fay's statements point by point. On the whole, however, his description is adequately true and perspicacious. What has to be questioned is his highly conventional interpretation of America as the land of the machine, prosperous, enthusiastic, thoughtless—above all, young. A certain sage remarked, *antiquitas saeculi iuventus mundi*. The beginning of philosophy lies in doubt, and most Europeans have yet to recognize that there is any possibility of question of the philosophic basis of their culture. And yet it is not clear that an egocentric culture, resting on the cultivation of subjectivity, introspection, and the inner self, is more beneficial to humanity, sounder scientifically, more satisfying artistically, or more commanding intellectually than a communal-centric culture, in which the link of man with his environment and tools and of man with man is recognized—a culture objective, extrovert, and of the social absolute. It was a prophet of their own

people, Hegel, who told us that "individuality *an und für sich* is the hall-mark of the devil." But of the things in this philosophy there are more than begin to be included in all M. Faÿ's heaven and earth.

GEORGE E. G. CATLIN.

Cornell University.

Danzig, Polen und der Völkerbund. By HANS ADOLF HARDER. (Berlin: Georg Stilke. 1928. Pp. 134)

Danziger Staats- und Völkerrecht. Zusammengestellt von HERMANN LEWINSKY und RICHARD WAGNER. (Berlin: Georg Stilke. 1927. Pp. 668.)

Zusammenstellung der zwischen der Freien Stadt Danzig und der Republik Polen abgeschlossenen bedeutsamen Verträge, Abkommen und Vereinbarungen. (Danzig: Senat der Freien Stadt Danzig, 1920-1923 and 1924-1927. Two volumes.)

Entscheidungen des Hohen Kommissars des Völkerbundes in der Freien Stadt Danzig. (Danzig: Senat der Freien Stadt Danzig. 1922-1927. Five volumes.)

Zbiór dokumentów urzędowych dotyczących stosunku Wolnego Miasta Gdańska do Rzeczypospolitej Polskiej. (Collection of Documents concerning the Free City of Danzig) (Warsaw: The Foreign Office. Three volumes. Pp. 141, 276, 239.)

At the Versailles Peace Conference the German city of Danzig was claimed by Poland as her "free and secure access to the sea," of which President Wilson spoke in the thirteenth of his Fourteen Points. Even the Allied Powers, however, had to acknowledge that "la population de Dantzig est et a été depuis longtemps en grande majorité allemande." Polish annexation of the city and its environs with their some 400,000 inhabitants, over ninety per cent of whom are German, would, therefore, have been a flagrant violation of the right of self-determination of a people—another of the Fourteen Points. As a compromise, an English plan for the establishment of a "free city" of Danzig under the protection of the League of Nations was resorted to. Poland was given equal rights with Danzig in the harbor, which was put under the control of a harbor board, independent of both parties; she also conducts the foreign relations of the Free City, in accordance with principles later laid down by the League and based on the treaty of Versailles; Poland owns and runs the important railways within the Free City, and Danzig is included

in the Polish customs territory. Whenever Poland and Danzig disagree on their respective rights and duties, either or both parties may appeal for a final decision to the high commissioner of the League, residing at Danzig, and from him to the League Council.

Harder reviews in a thorough and competent manner the relations between Danzig and Poland, and between both and the League, as they result from this unique arrangement. He succeeds in his endeavor to show by the case of Danzig that the working methods of the League have not yet become a rigid system—that, on the contrary, they are flexible and steadily influenced and modified by political developments. Their success or lack of it, their possibilities and limits, are fully discussed. While Harder supports the Danzig, i.e., the German, side, of the question throughout, Polish or pro-Polish contentions are cited adequately and dealt with in a fair way. There is no publication in either French or German—there is none at all in English—which gives as complete a picture of the political and juridical nature of the Danzig question as the one under review. Harder has had the support of the Institut für Auswärtige Politik in Hamburg, and of the Laura Spelman Rockefeller Memorial, in the preparation of his work.

Lewinsky and Wagner is a collection of the more important documents relating to the Free City. The selection is good, and the compilation as such is of great convenience to the student of the Danzig problem. Its value is diminished, however, by the fact that the documents are published in German only, whether or not the official text is in that language. Notes as to what are the official languages of certain documents and where they may be found are lacking.

The collection published under the auspices of the Danzig Senate (the government of Danzig) is a most helpful compilation of League decisions, and of treaties and agreements (in the official texts) between Danzig and Poland, which form the legal basis for the relations between the two countries. The Polish collection, obtainable only from the Warsaw Foreign Office, is of similar character. It gives in all cases the English, French, or German text of a document, besides the Polish. In the English texts, however, inaccuracies are so much more numerous than in the Danzig collection that it is preferable to use the latter.

JOHN B. MASON.

University of Wisconsin.

The Peace Pact of Paris. A Study of the Briand-Kellogg Treaty. By DAVID HUNTER MILLER. (New York: G. P. Putnam's Sons. 1928. Pp. vii, 287.)

War as an Instrument of National Policy and Its Renunciation in the Pact of Paris. JAMES T. SHOTWELL. (New York: Harcourt, Brace and Company. 1929. Pp. x, 310.)

These two notable analyses of the Briand-Kellogg treaty supplement each other. With marked literary skill, Professor Shotwell contributes a broad historical background and a suggestive, if not wholly convincing, statement of the influence of public opinion on the negotiations, which are lacking in Mr. Miller's lawyer-like treatment. The latter, however, brings keener legal powers to the analysis of the documents. As a distinguished champion of popular diplomacy, Professor Shotwell sets high the contribution of public opinion and unofficial agencies to the result, perhaps prematurely, when one considers what a small proportion of the official conversations and memoranda have thus far been published.

"The Pact of Paris," declares Professor Shotwell, "must be judged, not merely as an expression of international morals, as some of its friends have tried to interpret it, but as the effective embodiment of political realities; unless it has some practical value, it has little value at all." Though both authors are sanguine of the practical value of the pact, they are not always convincing. Is it clear that the exceptions to the renunciation in Article 1 should not be construed as exceptions to Article 2 also? What are the geographical limits to the so-called British Monroe Doctrine? Professor Shotwell thinks Egypt alone was meant, though he points out that the representative of the Foreign Office, when pressed in debate to explain what "regions of the world" were meant, declined to be specific. Mr. Miller believes that Egypt, the Suez Canal, and the Persian Gulf were intended. The definition, of course, rests with the British government.

Both authors conclude that neutrality, in the hitherto accepted sense, became obsolete with the signing of the treaty. "It would be maintaining anarchy at sea, in the name of freedom," declares Professor Shotwell, "if we insisted upon the right to make ourselves the accomplice of an aggressor nation by the free shipment of supplies to it, under the support and protection of our navy." In the eyes of Mr. Miller, the Briand-Kellogg treaty, which he describes as "in fact, though not in form," a treaty between the United States and the

League, "is an end of the old ideas of neutrality and is accordingly an end of difficulties about sea law."

Great stress is rightly laid by both authors on the need of supplementing the treaty with a more complete system for the pacific settlement of international disputes. In the all-important quest for alternatives to war, the emphasis, Professor Shotwell believes, "should be shifted from Court and Arbitration to Conciliation and Conference." Further progress here is vital. If the world should rest content with the success registered in the pact of August 27, 1928, the peace movement would have been slain in the house of its friends.

JAMES P. BAXTER, 3RD.

Harvard University.

The Legal Effects of Recognition in International Law as Interpreted by the Courts of the United States. By JOHN G. HERVEY. (Philadelphia: University of Pennsylvania Press. 1928. Pp. xiv, 170.)

The problem of the state before a foreign court is inherently difficult. Add the further consideration that the government which brings or defends the suit may be unrecognized, and the complexity increases. Or the controversy may be one concerning private rights, where there is drawn into question some act of an unrecognized government. Many aspects of the problem came before the courts a century ago, during the Latin American wars for independence. Rebellion and reconstruction presented the problem from a new angle. And now the question is, What attitude should the courts assume toward the Soviet government and its confiscatory decrees? In finding our way through the labyrinth of cases, Dr. Hervey has provided us with an excellent guide. The purpose of the book is expository rather than argumentative. The cases are arranged in logical categories and discussed with some fullness. The material is exclusively Anglo-American, the study being in no sense comparative.

The recognition of foreign governments is exclusively a political function. But delay in recognizing a government which has in fact become established is not tantamount to denying its existence. "Facts are facts, in Russia as elsewhere," as Judge Ford remarked in the Sokoloff case. The author approves the decision of the Court of Appeals of New York in the Wulfsohn case that the unrecognized government of a recognized state is none the less immune from suit in our courts. To have held otherwise would have been to invite

retaliation, and thus to embarrass the political branch of the government. In suits concerning private rights the same tribunal has said that "self-imposed limits of common sense and fairness" may require the courts to give effect to some Soviet decrees—for example, in order to protect one who has been the victim of spoliation. Dr. Hervey considers this view of public policy an expedient avenue of escape from the anomalies of the Russian situation. Herein he defends a position quite different from that of a recent French work by Noël-Henry.

In brief, the author has carefully and ably prepared a digest of a complicated body of cases. A number of typographical errors have gone uncorrected, and at the bottom of p. 44 a misquotation has crept in.

CHARLES FAIRMAN.

Harvard University.

The American Year Book: A Record of Events and Progress, 1928.

Edited by ALBERT BUSHNELL HART and WILLIAM M. SCHUYLER
(New York: The American Year Book Corporation, 1929. Pp. xxix, 892).

The American Year Book is of such great value to the student and teacher of government that it merits something more than brief mention. The latest number, like its predecessors, devotes almost one-half of its pages to data that are primarily concerned with American government, under the headings of American political history, international relations affecting the United States, national government, state government, municipal government, territories and spheres of influence, public finance and taxation, public resources and utilities, defense and armaments.

The list of contributors and their special topics is too long to present in full, but mention may be made of a few who are known to readers of the *Review*, such as Arthur W. MacMahon, on "Congress and Legislative Investigations," and "Significant Federal Legislation;" James Hart, on "The President and his Policies," and "National Statesmen;" Lloyd M. Short, on "Federal Administrative Commissions;" Irving Fisher, on "The Prohibition Controversy;" John M. Mathews, on "The United States and World Affairs," "National and Interstate Relations," "State Legislatures and Legislation," "State Executives and Departments," and "State Administration and Judiciary;" Frederic H. Guild, on "State Constitutions;" Charles Kettleborough, on "Changes in Electoral Laws;" Graham H. Stuart,

on "Latin American Relations;" A. H. Lybyer, on "Oriental and Near Eastern Relations;" Raymond L. Buell, on "International Conferences;" Milton Conover, on "Personnel Analysis of the Seventieth Congress;" Clinton Rogers Woodruff, on "Federal Civil Service," "City Politics," "City Manager Government," etc; Thomas Adams, on "Metropolitan and Regional Planning;" H. L. McBain, on "The Supreme Court and Constitutional Law;" O. C. Hormell, on "County and Rural Government," and A. E. Buck, on "The National Budget."

The remainder of the volume, dealing with topics of every possible description arranged under the headings of economics and business, social conditions and aims, science and the humanities, contains information which, although not primarily concerned with government, is often closely related thereto.

This is a reference work which should be accessible to every teacher and student of American government.

A. C. HANFORD.

Harvard University.

BRIEFER NOTICES

AMERICAN GOVERNMENT and CONSTITUTIONAL LAW

The latest addition to the "Reference Shelf" Series published by the H. W. Wilson Company is a booklet on *Federal and State Control of Water Power* (pp. 186) compiled by Julia E. Johnsen. Like the other volumes in the series, the present one includes a brief on the subject in both the affirmative and negative, a bibliography of about twenty pages, and some eighteen articles, addresses, or reports on both sides of the question of public ownership and control of water power, by such well known persons as John Bauer, George W. Norris, Gifford Pinchot, C. A. Dykstra, Alfred E. Smith, Judson King, Herbert Hoover, and Arthur T. Hadley. Although it does not strengthen either side of the argument as presented, more attention to interstate compacts would have been worth while. A useful pamphlet on a related subject is *Muscle Shoals and the Public Welfare*, by Marguerite Owen (pp. 45), published by the committee on living costs of the National League of Women Voters. Miss Owen traces the legislative history of Muscle Shoals, discusses the various problems involved, and gives the arguments for and against government operation. She favors government operation. The National League of Women Voters has also published *An Introduction*

to a Study of the Regulation of Public Utilities (pp. 82), by Julia M. Hicks, which is worthy of special consideration because of its clear presentation of a complicated subject, its careful analysis of the various problems involved, and its impartiality. The study includes sections on the growth of public utilities; the growth of public interest; agencies of regulation; the factors of regulation, such as standards, rate of return, operating costs, and definite percentage returns; the relation between securities issues and the value of the property; the present state of regulation; and methods proposed for further regulation.

State Insurance in the United States, by David McCahan (University of Pennsylvania Press, pp. xviii, 290), is not a study of the arguments for and against state insurance, but rather a comprehensive survey of the actual administration of the various insurance funds established by the American states, such as workmen's compensation funds, pension funds, hail insurance funds, bank and public deposits guaranty funds, public property insurance funds, and life insurance funds. The author concludes, in general, that "if funds, which are essentially self-insurance propositions, are competently managed, scientifically financed, and properly supervised, they should be no more open to attack on the ground that the state is invading the domain of private enterprise than would be similar systems operated by a large industrial corporation. If not conducted in accord with sound insurance principles, or if the political character of the state government peculiarly unfits it to provide an insurance service, then may these funds be subjected to criticism and the wisdom of their establishment questioned. Upon such grounds rest our criticisms of teachers' cash disbursements pension funds, public deposits guaranty funds, public official bonding funds, and public property insurance funds operating on the emergency reserve appropriations plan." Mr. McCahan does not believe, however, that a state monopoly in any field of insurance is desirable, but holds that "competition, sanely regulated, has been the life blood of insurance development in the past" and its "surest pledge of advancement for the future." The study is based largely on first-hand information gathered by personal visits in thirty-seven states, and is a most valuable contribution to the field of public administration.

Those who had the rare privilege of knowing the late James Ford Rhodes personally, and all who have read his books, are indebted

to M. A. DeWolfe Howe for his biography entitled *James Ford Rhodes: American Historian* (D. Appleton & Co., pp. 375). The author not only presents Mr. Rhodes as an intensely human, active-minded man who turned from a highly successful life of business to scholarship and writing, but he gives us a clear idea of how Rhodes did his work, how he gathered his material, what were his aims and ideals, and why his volumes were so rich in content. For students of government, the book is especially valuable on account of the numerous letters to such persons as Charles W. Eliot, Theodore Roosevelt, Lord Bryce, Lord Morley, Henry Cabot Lodge, Charles Francis Adams, Woodrow Wilson, Sir George Otto Trevelyan, and numerous others during the period 1900 to 1927. There are also a number of memoranda written by Mr. Rhodes after dinners and visits with well known persons. These letters and memoranda are rich with material because they comment frankly and with understanding on important political figures and events. One who starts on this book will not consign it to a place on his book-shelf until it has been read from beginning to end. It should make good summer reading.

A Study of Judicial Administration in the State of Maryland, by G. Kenneth Reiblich (Johns Hopkins Studies in Historical and Political Science, Series XLVII, No. 2, pp. vii, 155), contains information which is valuable to students of state and local government. The author not only describes the organization and workings of the court system in Maryland, but he also includes chapters on quasi-judicial bodies, and on the place of the executive in the administration of justice. Although he finds the Maryland judiciary, on the whole, working satisfactorily, Dr. Reiblich proposes certain reforms such as a greater unification of the court system, the introduction of arbitration and conciliation, the appointment of judges for good behavior, the abolition of the justice of the peace and coroner, and the substitution of indictment by information for the grand jury. He is of the opinion that the newly established judicial council offers the most practicable method for immediate improvement.

Under the auspices of the Institut Français de Washington, the various documents, reports, and letters having to do with Major Pierre Charles L'Enfant's work in the planning of Washington are brought together for the first time in *L'Enfant and Washington, 1791-1792*, by Elizabeth S. Kite (Johns Hopkins Press, pp. xi, 182). There is a delightful introduction by J. J. Jusserand, former French

ambassador, on "Major L'Enfant and the Federal City," and a foreword by Charles Moore, chairman of the National Commission of Fine Arts. A reproduction of the L'Enfant plan is included. This attractive volume not only throws light on certain phases of the early history and politics of the United States, but is of value to those interested in city planning. One obtains a very clear picture of the difficulties under which L'Enfant had to work, his intense devotion to the project, and the reasons why he was misunderstood, as well as the merits of the plan and the reasons for its final success.

Agricultural Reform in the United States, by Professor John D. Black (McGraw-Hill, pp. x, 511), is a timely and authoritative study of the problems of farm relief. After a survey of the present unsatisfactory status of agriculture and the causes of it, there follows a statement and evaluation of the various proposals for reform. The list comprises not merely the schemes for agricultural price-raising which are now claiming public attention—tariff revision, the equalization fee, export debentures, and the like—but also the more fundamental reforms which are needed in production, land utilization, marketing, transportation, credit, and taxation. It is made abundantly clear that there is no single, and certainly no simple, remedy for this complex and baffling problem. But the author makes a number of constructive suggestions. He has no brief, however, for any one of the many groups trying to secure remedial legislation, and his approach throughout is that of the trained economist. The book is clear and readable and is an important contribution to a vital problem. Another book dealing with the agricultural problem is *America Challenged*, by Lewis F. Carr (Macmillan, pp. 322). Mr. Carr disagrees with the opinion that most of the farmer's troubles are due to the farmer himself. In his opinion, the chief remedy lies in some plan of stabilizing prices, either through government action or by the help of private capital on a large scale. The style of the book is interesting, and there are numerous examples drawn from personal experience and observation.

Ginn and Company has published a helpful booklet on *The Massachusetts Voter: The Rights and Duties of Citizenship in State, County, City, and Town* (pp. x, 177), by Frederic W. Cook, for a long time secretary of the commonwealth. The material is arranged in question and answer form, and although intended primarily as a guide to the voter, the book is a source of reliable information for any one desiring data on state and local government in Massachusetts.

The Official Report of the Proceedings of the Nineteenth Republican Convention (The Tenny Press, New York, pp. 319) held in Kansas City, Missouri, in 1928, has been published under the supervision of Lafayette B. Gleason, the general secretary of the convention.

The Historical Bureau of the Indiana Library and Historical Department has published *A Bibliography of the Laws of Indiana, 1788-1927* (pp. xxxix, 77), by J. G. Rauch and Nellie C. Armstrong. The compilation begins with the laws for the government of the Northwest Territory. The authors have included an interesting introduction on "Sovereignty and Legislative Authority over Indiana."

FOREIGN AND COMPARATIVE GOVERNMENT

The International Publishers have brought out in two volumes the *Collected Works of V. I. Lenin: the Revolution of 1917*, Volume xx (pp. 381; 428). Whatever one may think of the Soviet government, one may not deny its activity in getting its case before the world. Apart from the active news service which provides us almost from day to day with an account of its efforts in the cause of civilization; apart from the personally conducted tours which produce a crop of books and articles from the pens of their recipients; apart from the perhaps less widely advertised activities of its agents, especially in the East, and the "propaganda" of its champions elsewhere; apart from "Arcos" and "Amtorg" and "Artkino," we have such volumes as those of the present series. The Soviet leaders' professed models, the Jacobins, had no such achievement to their credit, with all of their "correspondence" and "constitutional" societies; but they had, of course, less time, and they were absorbed in war. Naturally, the publishers of the Soviet régime begin with Lenin, whose writings, "revised and edited by the Lenin Institute in Moscow," now begin to be translated. The present ones form, it appears, the story of Lenin in the Revolution of 1917 from March to July, and are to be followed by others covering the period from July to November, which, with their predecessors and successors, will run, on the present scale, to between thirty and forty volumes. They are the speeches, the letters, the reports, the resolutions, and the articles which at once stimulated, accompanied, organized, and directed the Russian Revolution; and, whatever one may think of it or its authors, they are invaluable in studying that movement. The time has not come to determine their historical place or accuracy; but another generation will find in them a rich mine

to be worked by investigators, critics, controversialists, and even, perhaps, candidates for the degree of doctor of philosophy in at least two fields, that of history and that of political theory. W. C. A.

In *English Political Portraits of the Nineteenth Century* (Little, Brown and Company, pp. 327), J. R. Stirling Taylor has given us interesting critical biographical sketches of seven leading British figures—the first Duke of Wellington, George Canning, the second Viscount Melbourne, Sir Robert Peel, Disraeli, Gladstone, and Queen Victoria. Through the lives of these leaders one may obtain a good idea of English history of the last century. The author is of the opinion that the belief of some historians that Peel was “one of the best and most unselfish prime ministers that Britain has ever possessed . . . is a judgment based on sentimental fancies and not on the facts.” Although Disraeli as a political leader did not measure up to the standards of statesmanship set forth in his political novels, he “did far better than the rest, and several times played with the fringe of his own ideals.” In spite of “temptations to be as others were in the political game, he kept his ideals before his eyes and his honour unspoiled.” Gladstone is regarded as “a genius—which is a convenient word to express admiration for some one whom we cannot explain or understand. There were only two other statesmen of that high rank in nineteenth-century Britain—Wellington and Disraeli—and the three were as unlike as one human creature could be from another.” In Gladstone, “English history was given the honour of having produced one of the few statesmen who have put high principles before low expediency.” Queen Victoria is presented as “the most experienced and the sanest statesmen of them all.” The book is written in a vivid, clear style and makes interesting reading, although one will not agree with all of the author’s conclusions and estimates.

The War and the Russian Government, by Paul P. Gronsky and Nicholas J. Astrov (Yale University Press, pp. xvi, 331), the latest study in the Russian series of the Carnegie Endowment monographs on the economic and social history of the war, succeeds in presenting a wealth of material on a phase of Russia’s political development which has been unduly obscured by the fundamental changes that followed the Bolshevik revolution. This achievement is particularly remarkable in view of the fact that documents bearing on the subject are exceedingly scant outside of Russia. Mr. Gronsky ably summarizes the chief aspects of the central government as it existed in

1914, and traces its transformation during the World War down to the *coup d'état* of October, 1917. Mr. Astrov makes an illuminating study of the organization and activities of the Russian municipalities, and analyzes in detail the tasks performed by the All-Russian Union of Towns, both at the front and behind the lines. The authors maintain throughout the point of view favored by Russian liberals; the facts, however, are set forth with scientific detachment. The value of the volume is enhanced by tables, showing the budgets and expenditures of a number of municipalities, and by an excellent bibliography.

V. A. M.

Some Aspects of the French Law, by Junius Parker (Scribner's, pp. 82), includes three lectures given by the author at the University of Virginia on the William H. White Foundation. Mr. Parker traces the history of French law, discusses French penal laws and procedure and constitutional law, and compares some of the concepts, rules, and practices of the French law with those of the United States. In his opinion, one reason for the high quality of the French law is to be found "in the influence that is exercised on the minds of the legislators and judges of France by eminent *juris-consults*—whose great powers, intellectual and spiritual, are given to philosophic thought on law and the society that is governed by law." He also concludes that "in the definiteness of its rules of conduct—leaving out of consideration the matter of the wisdom and justice of such rules; in the prompt and effective method of adjudicating controversies; . . . and in the feasibility of the development of the law under scientific direction in response to the changing ideas of social and industrial justice, French jurisprudence, in my judgment, excels the jurisprudence of the United States and the states thereof."

The Tsing-hua Political Science Association has issued a *Reader's Guide to Political Literature in China* (National Tsing-hua University, Peiping, China, pp. 61). Part I includes a list of foreign books published in the years 1926-28 dealing with Chinese politics, economics, and foreign relations as found in the Tsing-hua University Library, together with a brief critical comment on each book. To this list is appended a bibliography of China compiled under the direction of W. A. Slade, of the Library of Congress. Part II includes a classified list of articles from six English periodicals devoted to Chinese affairs. The compilers do not claim that the present issue is an exhaustive collection.

American readers and students of government who have been following with interest the part played in European and international affairs by Gustav Stresemann, Germany's former chancellor and late minister of foreign affairs, will be thankful for an English translation of Baron Von Rheinbaben's *Stresemann: the Man and the Statesman* (pp. 321) which has been published by D. Appleton and Company. The author not only gives us an intensely interesting and human picture of the man himself, but he sets forth clearly the ideals and aims which have guided his actions and the part which he has played in restoring confidence in Germany and in furthering the cause of international peace. There is not a dull page in the book.

INTERNATIONAL LAW AND RELATIONS

The International Aspects of Electrical Communications in the Pacific Area, by Leslie Bennett Tribolet (The Johns Hopkins Press, Baltimore, pp. vi, 282), stresses the great strategic and commercial importance of the control of cable and radio communications. The author states that the amount of economic and political control in the various regions of the earth seems to be almost in direct ratio to the extent of the control of communications and propaganda in these same regions. In the light of this thesis, the rivalry of the British, American, and Japanese interests in the Pacific is discussed. The policy of the United States in not granting monopolies to private companies and in leaving the development of facilities for international communication to private enterprise is contrasted with the government-controlled systems of other nations. The study deals with a subject warranting attention. Careless writing and frequent unsubstantiated generalizations detract somewhat from the work as a whole.

A most welcome aid and stimulus to all students of recent American diplomatic history is Professor Benjamin H. Williams's thoughtful survey, *Economic Foreign Policy of the United States* (McGraw-Hill Book Company, pp. ix, 426). Skilfully sifting and evaluating an extensive body of materials which are often difficult to use on account of partisan criticism or official special pleading, the author has constructed with marked success an interesting and objective account of the diplomacy of investment and of the diplomacy of commerce as practiced by the United States. Though no work of its size and scope could be exhaustive, it is easily the best that has yet appeared on the subject.

J. P. B.

Aspects of Anglo-American Relations (Yale University Press, 1928, pp. xv, 111) contains the first two essays to be published under the annual prize award of the Brooks-Bright Foundation for the two best essays written in each academic year by undergraduate students at Oxford and Yale on a subject dealing with the relations between the British Empire and the United States. K. Capper Johnson, of Queen's College, Oxford, writes of "The Historical Significance of the American Revolution in the Development of the British Commonwealth of Nations;" and John M. Frankland, of Yale, discusses "The Influence of International Trade upon British-American Relations." The first essay is well-written, the second rather trite. J. P. B.

The Naval War College *International Law Situations, 1926* (Government Printing Office, pp. 134), prepared as heretofore by Professor G. G. Wilson, is of special interest at this moment of renewed discussion of the freedom of the seas. The chapter on continuous voyage traces the development of that doctrine from the rule of 1756 through the cases of the World War. The conclusion opposes an extension of the principle to "continuous voyage by substitution." Other topics are angary, aircraft in neutral ports, and the status of the submarine.

America's Naval Challenge, by Frederick Moore (Macmillan, pp. x, 166), is an interesting account, from the point of view of a journalist, of the post-war development in naval armaments, with special emphasis on the naval competition between Great Britain, Japan, and the United States. The author is opposed to a Great Navy program and warns the reader against the slogan, "Give us armament and we will give you peace."

Eagles Black and White (Appleton, pp. 205), by "Augur," is a popular account of the status of the Polish Corridor and of the many perplexing problems that it imposes upon the relations between Germany and Poland. The author stresses its potentiality as an instigator of ill feeling and comes to the conclusion that in accepting the *status quo* lies the only hope for peace. The subject is handled in a fashion to attract the general reader.

"Self-discipline for the individual; self-government for the state; self-restraint for the great international society! These are the cardinal objectives of the politics of peace." Thus Professor Charles E. Martin, dean of the faculty of social science, University of Washington, states

the thesis of his recent volume, *The Politics of Peace* (Stanford, pp. x, 458). Americanization, bolshevism, and militarism are among the topics discussed.

In *Diplomatic Europe Since the Treaty of Versailles* (Yale University Press, 1928, pp. vii, 130), by Count Carlo Sforza, the former Italian high commissioner in Turkey, minister for foreign affairs, and ambassador at Paris reprints six interesting lectures delivered at the Williamstown Institute of Politics, with some related documents.

POLITICAL THEORY AND MISCELLANEOUS

The Political Thought of Roger Williams, by James E. Ernst (University of Washington, pp. iv, 229), originally prepared as a doctoral thesis, appears as Volume vi, Number 1 of the University of Washington Publications in Language and Literature. The author has attempted to present in systematic form, following conventional lines of organization, the political theories of Roger Williams. There is evidence of thorough and painstaking examination of source materials, and much labor spent in putting selected bits together into a systematic whole. There is, however, a considerable amount of repetition, due in large part to the method of treatment followed. As is true in the case of so many doctoral dissertations, the value of the work is somewhat lessened by the rather labored style in which it is written. The author's main thesis seems to be that historians of the past, attracted by the religious thinking of Roger Williams, have failed to give him his due importance as a political theorist. According to Mr. Ernst, "his principles of religious liberty and liberty of conscience were naturally deduced from the major premises of his political theory" (p. 205). And again we read: "The assumption made by practically all students of Williams, that his theory of the state grew out of his principles of religious liberty and was a mere incidental by-product of it, must be put aside" (pp. 24-25). The case for the importance of Williams' political thinking seems to be well made. Mr. Ernst does a real service in reminding us of his contribution, in stressing the practicality, and, at the same time, the idealism, of his thought. Modern democratic political thought and practice undoubtedly owe much to this early radical, banished from Massachusetts Colony because of his dangerous opinions, and to the "lively experiment" with his ideas which he was fortunately able to carry out on Narragansett Bay.

L. M. G.

The Growth of Philosophic Radicalism, by Elie Halévy (Macmillan, pp. xviii, 554), which originally appeared in three volumes in France, is presented to English readers in one large volume, translated by Mary Morris. The translation as a whole is adequate, but at some points Miss Morris has found it impossible to escape the French. This is indicated in a small way by the retention of "criterium" for "criterion," and by the use of the phrase "spirit of corporation" (p. 117) to describe the institutional obstacles to progress which Bentham would sweep away. The close print will make many readers wish that the translator had been allowed two volumes. Showing as he does the antecedents of philosophic radicalism, M. Halévy must generalize a mass of literature and opinion. It would be remarkable if all his generalizations were universally acceptable. For example, it is hazardous to assert that all utilitarian philosophers refused to admit that sympathy is an "irreducible datum of experience" (p. 503) on a par with egoism. Yet M. Halévy will continue to find adherents to his main theses, which point to the contradictory assumptions of a natural identity and a natural conflict of interests; and to the individualistic postulate which brought the utilitarians back to the "principle of equality of rights" (p. 502). The translation will have served a good purpose if it stimulates English and American students to careful investigation of the more debatable generalizations.

R. O.

Volume six of *Lectures on Legal Topics* (pp. viii, 379), including addresses delivered in 1924-25 before the Association of the Bar of the City of New York, has been published by the Macmillan Company. The addresses of greatest interest to students of government, in general, are "Home Rule in the Light of a Century's Experience in New York City," by Charles L. Craig, comptroller of the city of New York; "The Press and the Courts," by Henry W. Taft; "The Spirit of the Constitution, or More Particularly the Sixth Amendment," by Judge Frederick E. Crane; "The Future of the Supreme Court," by James M. Beck; and "The Bolshevik Constitution from its Legal Point of View," by Henri Sliosberg, formerly of the bar of Petrograd. Mr. Beck believes that the Supreme Court should be relieved of half its excessive burden by restricting the litigation "to cases that the Attorney-General would certify that the government as a litigant had such an interest in that the court ought to hear it, and to private cases where a substantial constitutional question is involved, or to exceptional cases of general importance." M. Slios-

berg states that in Russia "there is no democracy whatever, . . . no vestige is to be found there of the freedom of the press, of speech, conscience, assembly, and there are no guarantees of personal inviolability, no trace of 'habeas corpus' act."

E. D. Simon, formerly mayor of Manchester, England, has written an interesting and informing book, *How to Abolish the Slums* (Longmans, Green, pp. xii, 146). The volume is not, as the title might indicate, a work of propaganda full of generalities; but is based upon a careful study of numerous reports and first-hand investigation. The author first surveys the present housing situation in England, explaining the extent of overcrowding, the work of reconditioning unsatisfactory houses that has been accomplished in recent years, and the post-war development in providing more and better homes for the workingmen. He concludes, however, that in spite of the progress which has been made nothing has been done for the slums since the war, that overcrowding is practically as bad as it was then, that the condition of the houses is actually worse, and that the situation of the very poor remains extremely unsatisfactory. For helping the poorest families, Mr. Simon regards some form of public subsidy as the only practicable scheme.

Professor M. W. Watkins has prepared for the National Industrial Conference Board a volume on *Mergers and the Law* (pp. x, 153) in the series dealing with the relation of the anti-trust laws to various aspects of modern industrial organization. A brief introductory chapter, explaining the development of the status of mergers at common law in England and America, is followed by three chapters on the court interpretation of the Sherman Act as applied to mergers. The emphasis here is upon the concrete working of "the rule of reason." An attempt is made to formulate "several propositions concerning the most moot points of interpretation of the anti-trust laws as applied to corporate consolidations." Although there will probably be no general agreement with these propositions, they will stimulate reflection upon some significant implications of the court decisions. R. O.

Living With the Law (New Republic, pp. xx, 266), by June Purcell Guild, explains in non-technical and readable style the legal rules with which the average citizen most commonly comes into contact. The author writes that as a social worker she "has never been able to conquer a feeling of astonishment, in discovering and rediscovering

how little everyone knows about the laws which affect every-day life." The topics treated are the judicial system, the several fields of law, absolute rights, marriage, divorce, husbands and wives, the child and his parent, legal attitude toward children, the illegitimate child, legal questions affecting the mentally abnormal, social responsibility for the poor, workers and the law, immigration and naturalization laws, criminal law, and the trial of the accused.

DOCTORAL DISSERTATIONS IN POLITICAL SCIENCE
IN PREPARATION AT AMERICAN UNIVERSITIES¹

COMPILED BY PITMAN B. POTTER

University of Wisconsin

POLITICAL PHILOSOPHY AND PSYCHOLOGY

- Norman Woods Beck*; A.B., Chicago, 1923. A Group of Political Scientists as Inventors. *Chicago*.
- Philip W. Buck*; A.B., Idaho, 1923. The Relations Between Political and Economic Thought. *California*.
- Jesse Thomas Carpenter*; A.B., Duke, 1920; A.M., Iowa, 1925. Sectional Minorities and the Federal Constitution in the Ante-bellum South; A Study in Southern Political Thought. *Harvard*.
- Edward F. Dow*; S.B., Bowdoin, 1925; A.M., Harvard, 1926. The Present Value of the City State Ideal. *Harvard*.
- Grace Givin*; A.B., Kansas, 1914; S.D., *ibid.*, 1916. Louise DeKoven Bowen as a Political Leader. *Chicago*.
- Mary Z. Johnson*; Ph.B., Chicago, 1924. Development of Democratic Theory since 1848. *Chicago*.
- Marion W. Lewis*; A.B., Rockford, 1928. Jane Addams; A Study in Leadership. *Chicago*.
- Chi Tai Li*; A.B., Ohio Wesleyan, 1925; A.M., Ohio State, 1926. Political Philosophy of Sun Yat-sen. *New York University*.
- **Ti Tsun Li*; A.B., Wisconsin, 1925; A.M., *ibid.*, 1926. The Political Theories of Sun Yat-sen. *Wisconsin*.
- Floyd L. Mulkey*; A.B., Baker, 1925. Recent Theories of Representative Government. *Chicago*.
- Frances Newborg*; A.B., Wellesley, 1927. Political Ideas in American Fiction. *Chicago*.
- Katherine Andrus Newkirk*; A.B., Pomona, 1923; A.M., Stanford, 1928. Alexander Hamilton's Concept of the State. *Stanford*.
- Robert Phillips*; A.B., Albion, 1916; A.M., Michigan, 1917. The Place of the Party in American Political Theory. *Michigan*.
- Irma H. Reed*; A.B., Radcliffe, 1924. The Political Theory of the Enlightened Despots. *Radcliffe*.
- Pearl Robertson*; Ph.B., Chicago, 1923; A.M., *ibid.*, 1925. Grover Cleveland as a Political Leader. *Chicago*.

¹ Similar lists have been printed in the *Review* as follows: IV, 420 (1910); V, 456 (1911); VI, 464 (1912); VII, 689 (1913); VIII, 488 (1914); XIV, 155 (1920); XVI, 497 (1922); XIX, 171 (1925); XX, 660 (1926); XXI, 645 (1927); XXII, 736 (1928).

Asterisks indicate dissertations completed during the current year.

- * *K. S. Shelvankar*; A.B., National University, Madras, 1924; A.M., Wisconsin, 1927. An Historical and Analytical Study of the Idea of Equality. *Wisconsin*.
- Robert C. Stevenson*; A.B., Occidental, 1925; A.M., Columbia, 1926. Theories of War and Peace. *California*.
- Ruth E. Wright*; A.B., Middlebury, 1923; A.M., Vermont, 1929. The Nationalism of Alexander Hamilton and of Theodore Roosevelt; a Comparative Study. *Columbia*.

UNITED STATES GOVERNMENT AND POLITICS AND CONSTITUTIONAL LAW.

- Norman Alexander*; A.B., North Dakota, 1919; A.M., *ibid.*, 1920. Rights of Aliens under the Federal Constitution. *Columbia*.
- Eleanor Bontecou*; A.B., Bryn Mawr, 1913; J.D., New York University, 1917. The Rule-Making Power and Federal Legislation. *Radcliffe*.
- M. E. Brake*; Ph.B., Chicago, 1920; J.D., *ibid.*, 1920. Criminal Law Enforcement by Injunction under Federal Legislation. *Chicago*.
- Paul Herman Buck*; A.B., Ohio State, 1921; A.M., *ibid.*, 1922. Party Divisions in the Van Buren and Tyler Administrations. *Harvard*.
- Lula Cain*; A.B., Illinois, 1922; A.M., Chicago, 1924. Minor Wars and Interventions of the United States. *Chicago*.
- Keith Clark*; Ph.B., Hamline, 1898; A.M., Minnesota, 1922. The United States and International Unions. *Columbia*.
- Royden Dangerfield*; S.B., Brigham Young, 1925. The Senate's Influence on the Foreign Relations of the United States. *Chicago*.
- Hugh L. Elsbree*; A.B., Harvard, 1925. The Regulation of Interstate Commerce in the Electric Power Industry. *Harvard*.
- Brooks Emeny*; A.B., Princeton, 1924. The Monroe Doctrine since the Great War. *Yale*.
- H. Schuyler Foster*; S.B., Dartmouth, 1925. American Attitude toward the European War, 1914-1917. *Chicago*.
- Felipe Gamboa*; A.B., Oregon, 1926; A.M., *ibid.*, 1927. The Political Policy of the United States in the Philippines. *California*.
- Max Geller*; A.B., College of City of New York, 1919; LL.B., New York Univ., 1920; A.M., *ibid.*, 1927. The Legal Effect of Unconstitutional Statutes. *New York University*.
- Merrill J. Hewitt*; A.B., Cornell College, 1927. American Military Interventions in China. *Northwestern*.
- Laurence V. Howard*; A.B., Southern College, 1920. The Method of Settling International Controversies by the United States. *Chicago*.
- Peyton Hurt*; A.B., Idaho, 1926; A.M., California, 1929. The Know-Nothing Party. *California*.
- Arthur James*; A.B., Lebanon, 1911; A.M., Cincinnati, 1913; B.D., Yale, 1915. American Rule in Porto Rico. *Columbia*.
- Joseph T. Law*; A.B., Drury, 1915; A.M., Wisconsin, 1921. Constitutional Limitations on the Delegation of Legislative Power. *Wisconsin*.
- Albert Lepawsky*; Ph.B., Chicago, 1927. Choice and Tenure of Judges in the United States. *Chicago*.

- Raymond Leydig*; A.B., Kansas, 1925; A.M., Columbia, 1928. The American Farm Bureau Federation—a Pressure Group. *Columbia*.
- Nelson Bernard Lisansky*; A.B., Johns Hopkins, 1927. The Development of Law of Searches and Seizures. *Johns Hopkins*.
- Stuart Alexander MacCorkle*; A.B., Washington and Lee, 1925; A.M., Virginia, 1928. Our Recognition Policy toward Mexico. *Johns Hopkins*.
- Evalyn Armistead Maurer*; A.B., Northwestern, 1927; A.M., *ibid.*, 1928. Governmental Regulation of the Interstate Distribution of Public Utility Products. *Northwestern*.
- James D. McGill*; A.B., Oberlin, 1920; A.M., *ibid.*, 1922. Religious Liberty and Equality in American Constitutional Law. *Cornell*.
- James R. Pennock*; A.B., Swarthmore, 1927; A.M., Harvard, 1928. Regionalism in American National Government. *Harvard*.
- Ernest R. Perkins*; A.B., Wesleyan, 1917; A.M., Clark, 1921. The Development of the Colonial Policies of the United States. *Clark*.
- S. Lyle Post*; A.B., University of California at Los Angeles, 1925. Methods of Coördination in American National Administration. *California*.
- Rex M. Potterf*; A.B., Indiana, 1918; A.M., Columbia, 1923, and Indiana, 1926. The Treaty of Versailles before the United States Senate. *Wisconsin*.
- Charles Percy Powell*; A.B., North Carolina, 1923; A.M., *ibid.*, 1925. Treatment of Alien Enemy Property in the Hands of the Custodian during the World War. *Johns Hopkins*.
- Allen Thomas Price*; Ph.B., Denison, 1916; A.M., Chicago, 1922. The Influence of the American Missionary Movement on American Diplomacy in China. *Harvard*.
- Helen R. Rosenberg*; A.B., California, 1923; A.M., *ibid.*, 1924. The Vice-President of the United States. *California*.
- Leon Sachs*. The Writ of Certiorari in Administrative Law. *Johns Hopkins*.
- Max A. Shepard*; A.B., Ohio State, 1927; A.M., Harvard, 1928. The Development of the Idea of the Fundamental Law of the Constitution. *Harvard*.
- George A. Shipman*; A.B., Wesleyan, 1925; A.M., *ibid.*, 1926. The Constitutional Doctrines of Justice Stephen J. Field. *Cornell*.
- Charles W. Shull*; A.B., Ohio Wesleyan, 1926; A.M., Ohio State, 1927. Contempt of the United States Senate and House of Representatives: Judicial and Investigative Powers of the Houses of Congress. *Ohio State*.
- Norman James Small*; A.B., Johns Hopkins, 1927. Some Presidential Interpretations of the Presidency. *Johns Hopkins*.
- Ivan M. Stone*; A.B., Nebraska, 1923; A.M., Illinois, 1926. The Relations of Petroleum to American Foreign Policy. *Illinois*.
- I. H. Su*; A.B., Wisconsin, 1926; A.M., Columbia, 1927. The Make-up of American Cabinets. *Columbia*.
- Tienkai Lincoln Tan*; A.B., Peking Teachers' College, 1922, A.M., Stanford, 1924. The Foreign Policy of Woodrow Wilson. *Stanford*.
- Harold Teacher*; A.B., Illinois, 1925; A.M., *ibid.*, 1926. Industrialization and the Consular Service. *Illinois*.
- * *Eleanor Tupper*; A.B., Brown, 1926; A.M., Clark, 1927. American Sentiment toward Japan, 1904–1924. *Clark*.

Paak S. Wu; A.B., Linghao University, Canton, 1926. The Federal Inspectorate. *Chicago*.

STATE AND LOCAL GOVERNMENT IN THE UNITED STATES.

John R. Abesold; A.B., Pennsylvania, 1922; LL.B., *ibid.*, 1925; A.M., *ibid.*, 1929. Commercial Arbitration in Pennsylvania. *Pennsylvania*.

William L. Bradshaw; S.B., Missouri, 1917; A.M., *ibid.*, 1924. The Missouri County Court: A Study of the Organization and Functions of the County Board of Supervisors in Missouri. *Iowa*.

Helen Breese; A.B., Bucknell, 1927; A.M., *ibid.*, 1928. Public Service Commissions; the Attachment of Jurisdiction. *Syracuse*.

Roy Edward Brown; S.B., Iowa State Teachers' College, 1923; A.M., Iowa, 1928. Organization and Administration of Fire Departments in Iowa. *Iowa*.

* *Daniel B. Carroll*; A.B., Illinois, 1915. The Unicameral Legislature of Vermont. *Wisconsin*.

Keith Carter; A.B., Randolph-Macon, 1907; A.M., Columbia, 1925. The Development of Criminal Law by Judicial Decision in Texas, 1890-1928. *Columbia*.

Lowry A. Doran; A.B., Chicago, 1910; A.M., *ibid.*, 1917. The Party System in Maine. *Chicago*.

William H. Edwards; A.B., Ohio State, 1923; A.M., *ibid.*, 1923. The Position of the Governor in Recent Administrative Reorganization in the States. *Ohio State*.

John North Edy; S.B., Missouri, 1905; A.M., California, 1926. Manual of Municipal Management. *Stanford*.

Rowland A. Egger; A.B., Southwestern, 1926; A.M., S.M.U., 1927. The Federated Region as a Solution of the Metropolitan Problem. *Michigan*.

Roy Ellis; A.B., Missouri, 1914; S.B., *ibid.*, 1914; A.M. Harvard, 1917. Civic History of Kansas City, Missouri. *Columbia*.

Lavinia Engle; A.B., Antioch, 1912. County Government in Maryland. *Johns Hopkins*.

James W. Errant; S.B., Illinois, 1923. Public Employee Organizations in Chicago. *Chicago*.

Russell Ewing; A.B., Minnesota, 1923; A.M., Columbia, 1924. The Problem of Personnel under City Management. *Columbia*.

Sonya Forthal; A.B., Wisconsin, 1922; A.M., *ibid.*, 1923. An Analysis of the Functions of Precinct Committeemen. *Chicago*.

Plato Lee Gettys; A.B., Oklahoma, 1919; A.M., *ibid.*, 1927. Torts and Liabilities of Cities. *Stanford*.

George A. Graham; A.B., Monmouth, 1926; A.M., Illinois, 1927. Special Assessments in Detroit. *Illinois*.

Carl Green; A.B., Eastern Illinois State Teachers' College, 1924; A.M., Illinois, 1925. School Legislation in Illinois and its Interpretation by the Courts. *Illinois*.

Victor Hunt Harding; LL.B., Syracuse, 1907; A.B., Stanford, 1925. Non-Voting in California. *Stanford*.

Randolph O. Huus; A.B., St. Olaf's, 1916; A.M., Columbia, 1924. Municipal Play-grounds. *Syracuse*.

- W. Rolland Maddox*; A.B., Ohio Wesleyan, 1923; A.M., Cincinnati, 1924. *Municipal Home Rule in Ohio; an Evaluation. Michigan.*
- John W. Manning*; A.B., Georgetown College, 1921; A.M., Missouri, 1926. *City Planning, Zoning, and Beautifying in Iowa. Iowa.*
- Roscoe C. Martin*; A.B., Texas, 1924; A.M., *ibid.*, 1925. *The Populist Movement in Texas. Chicago.*
- Charles E. Martz*; A.B., Yale, 1915; A.M., *ibid.*, 1917. *Ohio Politics from 1876 to 1900. Harvard.*
- David M. Maynard*; S.B., Princeton, 1922; A.M., Columbia, 1925. *Operation of the Referendum in Chicago. Chicago.*
- George M. McCaffrey*; A.B., Harvard, 1912; A.M., *ibid.*, 1913. *The Government of Metropolitan Boston. Harvard.*
- Joseph McGoldrick*; A.B., Columbia, 1923; A.M., *ibid.*, 1923. *Municipal Home Rule, 1916-1928. Columbia.*
- C. McKensie*; A.B., Dartmouth, 1920; A.M., Columbia, 1921. *The New Hampshire Town. Columbia.*
- Blake W. Nicholson*; LL.B., George Washington, 1923; LL.M., *ibid.*, 1925. S.B., Pennsylvania, 1926. *The Coroner of Pennsylvania Compared with the Medical Examiner of Other States. Pennsylvania.*
- Spencer D. Parratt*; A.B., Utah, 1924. *Organization of Governments in the Regional Area of Chicago. Chicago.*
- Joseph Pois*; A.B., Wisconsin, 1926; A.M., Chicago, 1927. *The Recruitment of Police. Chicago.*
- Charles James Rohr*; *The Executive and the Administration of the Maryland State Government. Johns Hopkins.*
- Burton F. Scott*; A.B., Washington, 1919. *History of Police in Chicago. Chicago.*
- C. R. Sherrill*; A.B., Wake Forest, 1921; A.M., Columbia, 1925. *The Results of Criminal Appeals in North Carolina. Columbia.*
- Carlton C. Sims*; S.B., Peabody, 1917; A.M., *ibid.*, 1922. *The Tennessee County. Chicago.*
- Robert F. Steadman*; S.B., Dakota Wesleyan, 1923. *Organization and Functioning of Public Health Agencies in the Regional Area of Chicago. Chicago.*
- Royal S. Steiner*; A.B., Beloit, 1915; A.M., Harvard, 1921. *State Control of Local Finance in Massachusetts and Ohio. Harvard.*
- John Frederick Thompson*; A.B., Pomona, 1927. *Political Activities of Organized Groups in Massachusetts. Harvard.*
- John P. Wright*; S.B., Alabama Polytechnic Institute, 1922. *The Workings of the Quadrennial Legislative System in the State of Alabama. Harvard.*

FOREIGN AND COMPARATIVE GOVERNMENT.

- E. C. Bellquist*; A.B., California, 1927; A.M., *ibid.*, 1928. *Actual and Theoretical Power of the Crown in Sweden. California.*
- Chun-Ming Chang*; A.B., Illinois, 1926; A.M., *ibid.*, 1927. *The Kuomintang and Chinese Nationalism. Yale.*
- Duckso Chang*; A.B., Waseda, Japan, 1916; A.M., Columbia, 1925. *Methods of Promoting Industrial Peace in Great Britain. Columbia.*
- * *Hartley W. Cross*; A.B., Springfield, 1923; A.M., Clark, 1924. *The Status of the British Dominions. Clark.*

- E. DeHass*; A.B., Hunter, 1923; A.M., Columbia, 1925. The Bail System in England. *Columbia*.
- A. G. Dewey*; A.B., McGill, 1911; A.M., *ibid.*, 1913. The Dominions and Diplomacy; the Canadian Contribution. *Columbia*.
- A.E. Elliott*; A.B., Drake, 1915; A.M., College of Missions. Latin American Attitude toward the Pan-American Union. *Columbia*.
- Margaret Bonine Fox*; A.B., Michigan, 1925. The Development and Use of Questions in the House of Commons. *Michigan*.
- Sooren Frankian*; A.B., California, 1924; A.M., *ibid.*, 1926. British Foreign Policies and the League of Nations. *California*.
- Frederic W. Ganzert*; A.B., California, 1926; A.M., *ibid.*, 1927. Brazil and the Pacific Settlement of International Disputes. *California*.
- Paul Heaton*; A.B., Minnesota, 1924; A.M., *ibid.*, 1925. Extraterritoriality in China. *Chicago*.
- Sylvester Hemleben*; A.B., Iowa, 1927; A.M., *ibid.*, 1928. The British Dominions in the League of Nations. *Columbia*.
- Pendleton Howard*. A.B., Columbia, 1921; A.M., *ibid.*, 1924. Public Prosecution in England. *Columbia*.
- William Crane Johnstone, Jr.*; A.B., Denver, 1924; A.M., *ibid.*, 1927. Administration of the International Settlement of Shanghai, China. *Stanford*.
- Margaret A. Judson*; A.B., Mount Holyoke, 1922; A.M., Radcliffe, 1923. The Growth of the Theory of Parliamentary Sovereignty in England between 1640 and 1660. *Radcliffe*.
- Grayson L. Kirk*; A.B., Miami, 1924; A.M., Clark, 1925. An Analysis of French Policy in Alsace-Lorraine since 1919. *Wisconsin*.
- K. P. Kirkwood*; A.B., Toronto, 1922; A.M., Columbia, 1927. The Solution of the Minority Problem in Turkey. *Columbia*.
- Chuang Liu*; Ph.B., Chicago, 1920. The Chinese Civil Service. *Chicago*.
- W. H. Ma*; A.B., Nanking, 1924. Palmerston's Far Eastern Policy. *Columbia*.
- Mary Mangigian*; A.B., Pennsylvania, 1927; A.M., *ibid.*, 1929. The Rise of the Armenian Republic. *Pennsylvania*.
- Ethel Marie Manning*; A.B., California, 1920; A.M., Southern California, 1926. Britannic Citizenship. *Stanford*.
- M. Matsuchita*; A.B., Carleton, 1925. Japan's Rôle in the League of Nations. *Columbia*.
- * *Sotaro Matsuchita*; A.B., California, 1917; A.M., *ibid.*, 1919. Labor Parties of Western Europe. *Harvard*.
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THE GERMAN PARTY SYSTEM

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It has now been ten years since the German people elected the National Assembly which gave them the Weimar constitution. A decade of self-government under this liberal and democratic charter has rather definitely established the lines of party cleavage and the general features of the party system, and the time seems ripe for a survey of the system with a view to elucidating its principal characteristics. The present article is concerned only incidentally with party history before the revolution of 1918, and also not primarily with the party programs of today. It has to do, rather, with what Lord Bryce once referred to as "the pathology of party government," and also with what political scientists have now come to recognize as the heart—one might say the thermostat—of popular government, namely, party organization and machinery. *Parteiwesen* is the German word, and it refers to the practical operation of the party system.¹

Why should Germany be the subject of such a study? There are several very good reasons. Since the overthrow of the imperial régime, Germany has been operating under a very progressive constitution. In many respects it is the most advanced

¹ For a good brief history of German parties, consult L. Bergsträsser, *Geschichte der politischen Parteien* (5th ed., Berlin, 1928). The standard reference on party programs is F. Saloman, *Die deutschen Parteiprogramme*, 3 vols. (4th ed., Berlin, 1926). In *Zehn Jahre Deutsche Republik*, by Anton Erkelenz (Berlin, 1928), pp. 534-542, Professor Bergsträsser has written a good brief account of the aims of present-day German parties.

constitution in the world. Political parties are required to operate such a system based on popular rule, and the party system developed in the Reich is so unique and interesting, so illustrative of many problems which are now troubling political thinkers the world over, that it warrants close study. Then again, by throwing light on the motive power and the nerves of the government, we will be better able to understand how the government itself operates. In brief, we find in Germany a new government operated by means of a new party system. The experience of an intelligent and powerful people with such a system should be useful to everyone interested in the problem of popular government.²

Speaking generally, political parties are attuned to the constitutional systems with which they are associated, and must be considered in the light of the nation's history. As Professor Bergsträsser well says, "the development of political parties in Germany cannot be understood if one does not place them inside the frame of the universal history of the German people."³ Before the revolution of 1918, there were political parties in Germany, but they were of little governmental importance because the government was not based on popular rule. Many political thinkers like Rohmer, Bluntschli, Stahl, Treitschke, Merkels, and Max Weber philosophized about the types of modern political parties, without considering the place of parties in the modern state.⁴ Today, parties must operate a democratic system, and they are consequently more important. The change in the constitutional system of Germany has thus led to a change in its party system. But the German historical background is the same as it was before the war, and the German people are quite the same.

Following the Revolution, the pre-war parties went through

² There has recently appeared an excellent study of the German government written by Blachly and Oatman and entitled *The Government and Administration of Germany* (Baltimore, 1928). The authors of this valuable book did not attempt to deal with German parties.

³ Bergsträsser, *op. cit.*, p. 7.

⁴ See the excellent book by Prof. Otto Koellreutter, *Die politischen Parteien im modernen Staate* (Breslau, 1926), pp. 18-36.

a metamorphosis by changing their names and some of their doctrines, and of course by changing their methods completely. All parties became "people's parties." Some of them even included the word "people's" in their new names. But even so, the National Assembly of 1918 was not entirely unlike, in the party make-up, the last Reichstag of the Empire. Since 1871 there has been some continuity in the historical development of German parties. In 1871 there were six "fractions"; in 1919 there were six great parties; in 1929 there are nine parties. The Social Democrats, the Nationalists, the Centrists, the People's party, and the Democrats all have roots in the past, even though today their organizations and operations are in most respects entirely different from what they were in the period before the war.

The natural political cleavages in present-day Germany are due, therefore, in part to historical events, and not merely to events since the Great War.⁵ Karl Marx and the socialist agitation in Germany have made the country class-conscious. This accounts for one great party, the Social Democrats. The Reformation effected a cleavage between Protestants and Catholics, and we find a distinct Catholic party as a result. The particularism of certain German states has led to the formation of a particularistic party such as the Bavarian People's party. The old Junkers called themselves Nationalists after the war, and the old National Liberal party broke into two sections, one converting itself into the People's party, the other into the Democratic party. Finally, the proximity of Germany to Russia has made the existence of a Communist party very natural; and post-war developments account for two parties of the Right, namely, the Economic party and the National Socialist party.

There are, of course, other political parties in Germany besides the ones just accounted for. But they are what the Germans call *Splitterparteien* or *Zwergparteien*. In the Reichstag election of 1928 there were actually twenty-nine party lists entered in the Reich. But of these parties, only fourteen secured

⁵ See Ernst Jäckh, *The New Germany* (London, 1927), p. 47.

seats, and only nine will be able to have any influence in legislation.⁶ In dealing with German parties, therefore, we need be concerned with no more than nine of them. The others are not organized nationally; they are largely personal and local; they have nearly all been formed in some one or two of the *Länder* merely to attract votes away from the larger parties; and they have no future. As soon as the Reichstag is able to deal with the matter of electoral reform, they will no longer exist; for it is only by the liberality of the present law that one man with a few followers is permitted to form a party. Few restraints are now imposed to prevent the German from indulging his natural bent by forming a new *Verein*, and the plethora of so-called political parties is to be expected to continue until legislation makes it necessary for a party really to represent a definite body of opinion before it can go before the voters and ask for their suffrages.

I. THE PRINCIPAL PARTIES

Before characterizing the party system generally, it will be well to note the general political opinion which each of the parties represents, and, in doing so, to follow the usual European basis, and move from the parties of the Left to those of the Right. On the extreme Left are the Communists. They are members of the Third International, and they have the closest relationships with the Soviet government.⁷ At present they are the fourth strongest party in the Reich, with fifty-four seats in the Reichstag. Their strength, although it has been on the up-grade in recent years, is rather limited to a few of the great centers of population and industry such as Berlin, Hamburg, and sections of the Westphalian and Saxon industrial areas. In no one of the thirty-five electoral districts into which Germany is divided do the Communists have over thirty per cent of the total vote, and in only three do they have from twenty to thirty per cent.⁸

⁶ *American Political Science Review*, vol. 22, pp. 698-706.

⁷ See Joseph Lenz, *Was wollen die Kommunisten* (Berlin, 1927).

⁸ *Die Gesellschaft*, vol. 5, No. 7, p. 5.

Next to the Communists are the Social Democrats. This party is, and has been since 1918, the strongest in Germany. Its present proportion of seats in the Reichstag, in the various Landtags, and in the numerous city councils is nearly one-third of the total membership.⁹ The present Chancellor of the Reich is a Social Democrat; the prime minister of Prussia is a Social Democrat; and the total popular vote polled by the party in the last parliamentary election was 9,151,059, more than double the vote polled by its nearest competitor, the Nationalists. The paid-up membership of the party at the end of the fiscal year 1927 was 867,671.¹⁰ The party is in every respect truly imposing, and without any doubt is the greatest political influence in the new Germany. With the possible exception of the Conservative party in England, no party in the world is so well organized. It is a member of the Second International, and since the promulgation of the Weimar constitution has been decidedly evolutionary in its socialist opinions.¹¹

Continuing from Left to Right, the next party is the German Democratic party, the left wing of the old National Liberals.¹² This party is very liberal; it contains many of the intelligentsia; and it has had a great influence in the government of the country despite the fact that it is apparently losing some of its popular support. It is now the sixth largest party.

The Center, or Catholic, party, although limited in popular voting strength to western Germany, continues to be the third largest party in the Reich, and by virtue of its position midway between Left and Right, has been able to have its representatives in every cabinet since the formation of the republic. The party

⁹ The *Jahrbuch der deutschen Sozialdemokratie*, 1927, p. 219, contains a table showing the representation of the party in the various governing bodies of the Reich.

¹⁰ *Op. cit.*, p. 185.

¹¹ The standard history of the Social Democratic party is Franz Mehring, *Geschichte der deutschen Sozialdemokratie*, 4 vols. (Stuttgart, 1903). A shorter, but more recent, work is Richard Lipinski, *Die Sozialdemokratie*, 2 vols. (Berlin, 1927). See *Jahrbuch der deutschen Sozialdemokratie*, which has appeared each year since 1926.

¹² See Anton Erkelenz, *Zehn Jahre Deutsche Republik* (Berlin, 1928), a volume which deals with all phases of the life and work of the Democratic party.

is held together by the religious tie, even though it contains two groups with opposite opinions.¹³ The Bavarian People's party, which is next to the Catholic party, is really a "brother party," as Dr. Georg Schreiber calls it, with a working arrangement with the Catholic party assuring that it will be left alone in Bavaria, where its entire strength lies. The party is decidedly more conservative than the Center party, but in most matters in the Reichstag its policy goes hand in hand with that of the Centrists.¹⁴

The next party is the German People's party, led—until his death a short time ago—by Dr. Gustav Stresemann.¹⁵ Until the last elections, it was fourth in strength in the Reich; but it has now been surpassed by the Communist party. Although there is considerable talk from time to time about a merger of the People's party with the Democratic party, little progress has been made in this direction. The political programs of the two seem to be similar, but their economic ideas and social interests are wide apart. The People's party is the party of "big business," while the Democratic party has a broader social policy.

The Economic party, which since 1924 has had some strength in the national parliament, is a group of opportunists which, on account of inflation and its attendant evils, has been able to appeal to the discontent of various groups by promising improved conditions.¹⁶ As long as economic conditions remain troubled, this party will continue to exist. But it is not founded on any permanent economic interest, nor upon any strongly held body of opinion.

The German National People's party, or the Nationalists,

¹³ See Karl Bachem, *Vorgeschichte und Geschichte und Politik der deutschen Zentrumspartei* (Cologne, 1927); Johannes Schauß, *Die deutschen Katholiken und die Zentrumspartei* (Cologne, 1927); Adam Röder, *Der Weg des Zentrums* (Berlin, 1925); and G. Schreiber, *Grundfragen der Zentrumspolitik* (Berlin, 1924).

¹⁴ See "Die Arbeitsgemeinschaft zwischen Bayerischer Volkspartei und Zentrum," in the party magazine *Tren zur Fahne*, Dec., 1927, Munich. Also Georg Schreiber, *Politisches Jahrbuch*, 1925, p. 69 ff.

¹⁵ In 1927 this party published a volume entitled *Deutscher Aufbau* which contains a series of articles dealing with all phases of the party's life.

¹⁶ The Nationalists have published a useful pamphlet entitled "Die Wirtschaftspartei," Berlin, 1927. See *Handbuch der Wirtschaftspartei* (Berlin, 1924).

as it is popularly called, is, and has been since 1918, the second strongest party in the country.¹⁷ As in other German parties, there are two wings, left and right; but, in general, one can say that the party is distinctly conservative, although it has ceased to be actually monarchist and has helped to put through the Dawes Plan and the Locarno treaties. In this party are found the large landowners and many industrialists.

Finally, on the extreme Right are the National Socialists, who are not Marxian socialists at all, but rather are strongly chauvinist, anti-semitic, monarchical, and reactionary.¹⁸ This small group is led by Adolf Hitler; it received but 800,000 votes in the last election, most of them from southern and western Germany; and it is without organization throughout most of the country.

II. ORGANIZATION AND WORK OF THE PARTIES

We come now to the organization and work of the parties.¹⁹ In the first place, German parties are highly organized. In complete contrast with the multiple-party system of France, Germany has developed a highly integrated, smoothly working party machinery which has an equal in England but no superior anywhere in the world. One might naturally expect the Germans to be perfect in party organization, and yet before the war Germany hardly knew what professional party organizers were. Today, however, under the democratic régime, not only are political parties necessary, but, due to the requirements of the new constitutional system, it is necessary for them to be at work the year round in order to be ready at any time for elections.

¹⁷ See Graf Westarp, *Klar das Ziel* (Berlin 1926); also Walther Graef, *Werden und Wollen der Deutschnationalen Partei* (Berlin, 1924), and Walter Lambach, *Politische Praxis* (Berlin, 1927).

¹⁸ *Nationalsozialistisches Jahrbuch* (Munich, 1927).

¹⁹ Consult Herbert Sultan, "Zur Soziologie des Modernen Parteisystems," in *Archiv für Sozialwissenschaft und Sozialpolitik*, vol. 55, No. 1, pp. 91-140; Heinrich Triepel, *Die Staatsverfassung und die politischen Parteien* (Berlin, 1928); Georg Decker, "Krise des deutschen Parteisystems," in *Die Gesellschaft*, vol. 3, No. 1, pp. 1-16 (1926). Also the organization handbooks of the various parties which are distributed among their workers.

The general features of party organization in Germany are quite the same for all parties.²⁰ There are variations, of course, and in several of the *Länder* there are wide differences. But, following the *Satzungen*, or constitutions, of the various national parties, we find rather uniform provisions. Inasmuch as the organization of German parties, according to their fundamental statutes, is built from the bottom to the top, one would be led to believe that the structure is entirely democratic.

German parties uniformly require persons who become members to adhere to the fundamental principles of the party and to be enrolled on the party list—in most cases, also, to pay a regular contribution to the party, a requirement which is effective only in the case of the Social Democratic party. Parties are careful to see to it that only inscribed members become officials and candidates. Due to the system of nomination in vogue (to be referred to later), the leaders have an effective means of controlling this matter. No “mongrels” or “mugwumps” ever become candidates of a German party; only the true-blue members are allowed to carry the party colors or represent the party or in any effective way control the party activities. Discipline is enforced rather effectively.²¹ Most of the party constitutions contain provisions making it possible to expel members who commit certain generally defined acts of opposition or injury to the party. These provisions take up more space in the organization statutes than one might expect, and although the practice is not quite as rigid as the law, parties do expel members and at all times keep careful check upon their leaders and

²⁰ The organization of the Economic party, the National Socialist party, the Bavarian Peoples' party, and the Communist party will not be drawn on for illustrations, because, several features of their organizations are not typical, and because they are not of major importance. In a short study such as this, they cannot be treated. The Bavarian Peoples' party is a very interesting group which might well be studied separately. See Anton Pfeiffer, *Gedankenwelt und Tätigkeit der bayerischen Volkspartei* (Munich, 1925).

²¹ If a member of the party in a legislative body leaves his party, he is expected to vacate his seat, so that the party will be properly represented. There is a moral, but not a legal, obligation to resign. See R. H. Wells, “Partisanship and Parties in German Municipal Government,” *National Municipal Review*, vol. 17, pp. 479-481 (August, 1928).

members to see that they are orthodox. Party discipline, as will appear more clearly later, is a reality in Germany, and not an idle dream as it is in the United States.

The governing organs of the German party are of two general kinds, deliberative and executive. The various *Versammlungen*, or party assemblies, are the organs of discussion, while the *Parteivorstand*, or executive committee, and the various *Parteiausschüsse*, or party committees, are the executive organs. The most important party assembly is the *Parteitag*, or national convention, which consists of delegates from the various districts of the country, in proportion to the party vote or to the party membership in each district, together with the members of the party in the Reichstag and the members of the various party committees. The *Parteitag* has the power to draw up the party constitution or amend it, to formulate the party program, and, in general, to settle the lines of party policy. In the case of the Social Democratic, Center, and Democratic parties, this body is of great importance. The constitution of the Social Democratic party, for instance, states that "the *Parteitag* is the supreme representative of the party," and by other provisions makes it clear that it is also the supreme authority in the party. The *Parteitag* of the Nationalists and of the People's party, however, is not so important, although in both these cases, too, it has the power to adopt and amend the party constitution. As a rule, these national conventions meet once a year, although in the case of the Social Democratic party a meeting is held about once in three years, due partly to the great expense under the Socialist rules of calling together so large an assembly.

In the Social Democratic, Center, and Democratic parties, the *Parteitag* also elects the *Parteivorstand*, and also the *Vorsitzender*, or chairman. But in the Nationalist and People's parties there is an additional body, known in the former as the *Parteivertretung* and in the latter as the *Zentralvorstand*, which has the power to select the chairman of the party.

The executive committee is assisted by a *Parteiausschuss* in the Social Democratic party, by a *Reichsparteiausschuss* in the

Center party; or, as in the People's party, by a *Reichsausschuss*. This body, which contains delegates from all the districts (by whatever name it is known), comes together upon call of the party executives to discuss important party or political developments. Next, each party has a *Parteiverwaltung*, or *Geschäftsführende Ausschuss* or *Parteileitung*—in the case of the Democrats and Socialists, a *Partei Vorstand*, which, by means of central headquarters in Berlin, with a large permanent staff, directs the work of the party throughout the Reich.²²

These various organs constitute the chief cogs in the German party machine, but they require for their proper operation a well integrated and smoothly oiled local organization in each of the districts into which the Reich is divided. German parties have adopted the electoral district as their principal unit of local party control, and in each of these districts will be found a local organization developed along the lines of the national organization.²³ There are local conventions and a local executive committee, which runs the party business. The constitution of the Center party illustrates the various units in the party machinery: "The party consists of municipal and county organizations, of state and provincial and electoral district organizations, and of a national organization. The party organizations consist of party assemblies, party executive committees, and party committees." All of these local organizations are tied up with the next highest unit, and constant contacts are kept between the successive divisions of the party machinery. The directing force is the national headquarters in Berlin; but everything depends upon the coöperation of the local units, from the

²² The organization of the Communist party differs from that of the other parties in that it is based entirely on the working class, and is built up from what are called *Betriebszellen* or *Strassenzellen*. In every unit there is an assembly and a party directorate, which culminates in a party conference and a party convention which elects a central committee to direct the party work. Although the plan of organization looks very democratic, actually the party is quite easily controlled by a few leaders. See Ossip Piatnitzki, *Organisatorische Fragen* (Hamburg, 1925), for a complete description of the party organization, together with numerous organization charts.

²³ See the various annual reports published by the provincial organizations of the Social Democratic party and of the Center party.

electoral district organizations through the provincial and county organizations to the city and village organizations. Each party, with the exception of the Social Democrats, has several districts where its organization is weak, but it is really amazing how thoroughly the whole Reich is organized for all of the principal parties. That is to say, not every party is well organized in every district, but in every district at least three of the parties are well organized and in the running when elections come along. One-party districts are unknown.

Throughout the whole Reich, the parties maintain adequate district headquarters, which are kept functioning the year round. There is not merely an agent but frequently a small staff to take care of the regular party work. If the party has a newspaper in the district, as it probably has, the party officials work hand in hand with the gentlemen of the press. Many of the local party officials are also members of the *Reichstag* or of the *Landtag*, the *Kreistag* or the *Gemeinderat*, and work at party headquarters when their legislative duties permit. The Social Democratic party has approximately fifteen hundred paid officials.

Every party provides for a number of committees to carry on work along certain lines. Thus there will be a national committee, with local representatives, to deal with communal politics; one to deal with women; one with young people; one with officials; and so forth. These committees meet probably several times a year and discuss the problems of particular interest to them.²⁴ Through them, and through the regular party officials, the members are constantly being informed about the various phases of party work. Serious educational work, also, is being carried on continuously to develop the party members. Schools, excursions, celebrations, courses of lectures, moving pictures, educational pamphlets—all are regular parts of party activity.²⁵ Various summer schools are held, and as often as possible district and national meetings are called.

²⁴ See, for instance, the *Jahresbericht* of the German Democratic party for 1926, in order to find a list of the party's activities.

²⁵ Consult the section entitled *Bildungswesen* in the *Jahrbuch der deutschen Sozialdemokratie*, 1927, p. 220.

Every party publishes a number of regular magazines for general circulation. These vary from general political reviews to specialized reviews dealing with communal politics, activities of women, agriculture, and the like.²⁶ Several of these party magazines are of a higher order, and all of them are useful, even necessary, in following German party activity. The multifarious work done by German parties is very adequately revealed by a perusal of their regular publications. In addition to these, the parties prepare and distribute enormous amounts of pamphlet propaganda.²⁷

Probably the most important instrument of propaganda at the disposal of the parties is the press. German newspapers are entirely partisan. They are frequently the creatures, and are always the slaves, of parties. Some newspapers call themselves independent, and a few papers are reasonably so, but the German press as a whole is a powerful party instrument, or, rather, several powerful party instruments. Much could be written to make this point clear, but a few illustrations will suffice. At the end of 1927 the Social Democratic party not merely controlled, but actually owned, 188 newspapers, and 179 of these were published by the party's own presses.²⁸ The Social Democratic *Year-Book* says very clearly that "the newspaper presses of the party are a part of the party organization, with the purpose of carrying on propaganda for the party in an important field."²⁹ The Nationalist party is served well by the powerful Hugenberg combine, which includes not only newspapers but also moving pictures.³⁰ Three of the best newspapers, while very much above the standard of independence for German

²⁶ A few of the more important ones are: *Kommunalpolitische Blätter* (Centrist), *die Gemeinde* (Socialist), *Kommunale Umschau* (Peoples' party), *Der Demokrat* (Democratic), *Die Hilfe* (Democratic), *Deutsche Stimmen* (Peoples' party), *Das Junge Zentrum* (Centrist), *Unsere Partei* (Nationalist), *Deutsche Selbstverwaltung* (Nationalist).

²⁷ See *Jahrbuch der deutschen Sozialdemokratie*, 1927, p. 188.

²⁸ *Op. cit.*, 1927, p. 223. See also a party publication entitled "*Die Sozialdemokratische Parteipresse im Geschäftsjahr 1927*."

²⁹ *Op. cit.*, p. 222.

³⁰ Consult Ludwig Bernhard, *Der Hugenberg-Konzern* (Berlin, 1928); also Paul Baecker, *Die deutschnationale Volkspartei und die Presse* (Berlin, 1925).

papers, constantly assist the Democratic party.³¹ There is thus a close connection between party and press, and one frequently finds the party editors holding important places in the councils of the party, if not actually representing the party in the Reichstag or in some one of the Landtags.³² Each party has a press service which supplies regular correspondence to the newspapers of the party throughout the year.

This extensive party activity requires a rather large financial outlay. As in other countries, the party funds are never adequate, and German parties feel that they are in straightened circumstances. But they manage to collect very sizeable sums to carry on their work. Election expenditures are also large, but in general well made.³³

When the election campaign begins, all the hard work of the previous electoral period bears fruit. There is very little lost motion or lost time, as there commonly is in an American campaign, and the party machinery, which has been kept well oiled, can promptly be speeded up. Party activity is merely intensified, and the election hinges more on the work done before the campaign than on that during it. German elections are hard fought, thoroughly organized, and seriously managed. The active campaign lasts about three weeks, although six weeks usually intervene between the dissolution of the Reichstag and the election.³⁴

III. CHARACTERISTICS OF THE PARTY SYSTEM

One can now see what a vast and important mechanism the German party system is. Keeping the organization and work of

³¹ The three newspapers here referred to are the *Berliner Tageblatt*, the *Vossische Zeitung* of Berlin, and the *Frankfurter Zeitung*. See Franz Göttinger, *Geheimwirkungen der Presse* (Graz, 1924).

³² Stampfer, the editor of *Vorwärts*, Georg Bernhard, the editor of the "Voss," and Hugenberg are members of the Reichstag, merely to mention a few of the more prominent editors. Many Social Democratic members of the Reichstag and of the various Landtags are also editors of local newspapers.

³³ The writer hopes to publish in the near future a study of the use of money in English, French, and German elections where these matters will be treated thoroughly.

³⁴ See *American Political Science Review*, vol. 22, pp. 698-706, for an account of the last Reichstag election. Also *National Municipal Review*, vol. 17, pp. 15-19, for an account of a municipal election in Hamburg.

the parties in mind, let us look at the system as party pathologists in order to discover its elements of strength and its elements of weakness, where the power is actually lodged, and what contributions to popular government it is making.

In the first place, attention should be called to the power of what we in America call "the machine," and what the Germans refer to as "the party bureaucracy." With the coming of democracy to Germany, and the consequent mechanization of party life, it was a natural tendency for the power of the party machine to grow. Today it has developed until, as Professor Koellreutter points out, "it has come to be the master and not the servant of the voters."³⁵ This development he attributes to the fact that "the modern party organization of mass parties must use demagogic means," whether it belongs to a Left or to a Right party, if it expects to win the masses to its banner. Advertising and publicity methods are quite the same for all parties. "Everywhere," he says, "there is mechanization, which one can also indicate as Americanization."

There can be no doubt of the overweening influence of the party directorate. As has been pointed out previously, its members are in the party conventions. They also make up the agenda for these conventions, they collect and dispose of large funds, and in practice they manage to perpetuate themselves in control of the party machinery. There is, of course, considerable variation among the parties. The Social Democratic party appears to be operated and controlled democratically,³⁶ while the Nationalist party, by its devious and various organization methods, makes it exceedingly difficult for the rank and file really to control party action. At the present time, Herr Hugenberg, the powerful figure who controls so many avenues of publicity and opinion, is the leader of the Nationalist party, and the machinery is so well devised that he has no difficulty in controlling his party very effectively.³⁷

³⁵ Otto Koellreutter, *Die politischen Parteien im modernen Staate*, pp. 50-54.

³⁶ See the *Organisationsstatut der Sozialdemokratischen Partei Deutschlands*, section 6.

³⁷ See the *Satzungen der deutschnationalen Volkspartei*, especially sections 31 to 47 inclusive. The real power in the party is not the national convention nor the local conventions, but the executive organs, especially the *Parteileitung*.

Every observer of German party government remarks about how strongly the machine is entrenched. Spengler, perhaps, has uttered the most stinging criticism. "The constitution of 1919," he says, "coming into existence on the verge of the decline of democracy, contains in all ingenuousness a dictatorship of the party machines, which have conferred upon themselves all rights and are responsible to no one. The notorious system of proportional representation with its national list secures their self-recruitment. In place of the rights of the people which were axiomatic in the constitution of 1848, there are now only party rights, which sound harmless but which nurture within themselves a Cæsarism of the organizations."³⁸ Other observers likewise point to the system of proportional representation which is in force in Germany as the cause of the great power of the machine. This system, known as a system of strictly binding lists, forces the electors to vote for a party list and not for a person. The list of party candidates has been prepared beforehand by the party leaders in a more or less—mostly less—democratic way, and when the voter gets his ballot he places a cross after the name of a party, and the seats are awarded to each party in the proportion which the party's vote bears to the total vote. In elections to the Reichstag a seat is given for every 60,000 votes.³⁹

Since the party leaders have control over the nomination of the lists, and the voters have only the opportunity to vote for one party or the other, without in any way changing the order of names on the lists, or without picking one name from one list and another name from another list, great power is concentrated in the hands of the leaders of the parties. The nomination process is entirely unregulated by law. Each party sets up its own system, which usually consists of a local assembly of the party

³⁸ Oswald Spengler, *Untergang des Abendlandes*, vol. 2, p. 573.

³⁹ A party, however large its total vote in the Reich, cannot secure a seat unless it has been able to elect a member in one of the thirty-five districts. All surpluses from these districts are taken to the unions of districts, where seats are again awarded on the basis of one seat for each 60,000 votes. Finally, any surpluses from the unions of districts, or if the party has not seen fit to make unions of districts, then all surpluses from the districts, are carried over to the national list, where again one seat is awarded for every 60,000 votes. There is, therefore, no wastage of votes, and parties secure representation in exact proportion to the vote cast.

members to decide upon the lists for local offices, another assembly in the electoral district or state to select the lists for the Landtag and Reichstag elections, and a national committee, usually the *Parteivorstand*, to decide upon the candidates to be placed on the national list.⁴⁰ In the case of the party assemblies, there is rarely a change made in the recommendations of the party leaders. In the nomination of the national list, party expediency is the chief criterion of selection, and a consultation with the rank and file of the party is not necessary. The fuss and fury and expense of an American primary election are thus obviated, and party regularity and control by the leaders can be much more easily achieved than under American conditions.

With the system of P.R. in force in Germany, the leaders may, by arranging only a few unions of lists, carry over to the national list a large surplus which will then be available to elect a larger number of candidates from the national list. Reference to the election returns for the last two Reichstags will make clear how this is accomplished.⁴¹ In the December election of 1924, for instance, the Social Democrats, with the largest total vote, elected but six members from their national list, while the Nationalists, with a million and a half fewer popular votes, elected fourteen members from theirs.⁴²

The national list is only one means of strengthening the party machine. The fact that Germany is divided into thirty-five large districts for the purpose of a national election makes it exceedingly difficult for the members of Parliament either to be known in or to keep in touch with their constituencies. The population of a constituency varies from one and a quarter million to two and a half million people. The large area of the constituencies also militates against a member becoming ac-

⁴⁰ See Section 32 of the Nationalist constitution; also sections 14 and 15 of the People's party constitution.

⁴¹ Consult *Hauptergebnisse der Wahlen zum Reichstag* bearbeitet in Büro des Reichswahlleiters (Berlin, 1928).

⁴² The names placed on the national list are usually those of prominent members of the party. Some of these might find difficulty in being elected in a constituency, but the party feels the need of their services and assures their election by putting them on the national list in good position. There is, of course, some value in assuring seats to many of the best men in the party.

quainted with his constituents. Pomerania and Baden, for instance, are each separate constituencies. The German member of Parliament, therefore, has even a more difficult political task than an American senator, for, in addition to having a large area to cover and an enormous number of voters to reach, he must always keep his political fences in repair, for an election may occur at any time.

If the German member of Parliament actually felt the necessity of working his constituency thoroughly, he would have a difficult task indeed. But the mere magnitude of the task has led to the development of a system which is much easier for the member of Parliament and much better for the party managers. The essence of the system simply is that the member looks to the party machine for his nomination and election and not to the voters. If he can keep in favor with the leaders, it does not much matter whether he courts his constituency. The managers can ensure his nomination and election, while the voters, in most cases, are not able even to make his nomination possible.⁴³

Another feature of the German electoral system deserves mention because of its bearing on the party system. No provision is made for by-elections to fill vacancies in the membership of legislative bodies. In the event of a vacancy, the next highest man on the same party list automatically takes the vacant seat, thus eliminating the expense of a special election, but further strengthening the control of the party managers at the expense of the rank and file of the party voters.

There is consequently much justice in the complaint of one writer that "parties are everything and the individual is nothing."⁴⁴ Not only does the party machine nominate the candidate, but it also keeps strict control over him after he is elected, so that he can perform his parliamentary duties only in accordance with the instructions of the party leaders. The binding force of party in legislation will appear later.

The complaint frequently uttered in Germany against the

⁴³ In the states, counties, and cities the binding force of the machine is somewhat less than in the national sphere. But the writer was unable to find any section of Germany where the machine was weak.

⁴⁴ *Zeitschrift für Politik*, vol. 18, no. 3, pp. 137-146.

system of P. R. at present in force is that it entrenches the party bureaucracy too strongly, that it causes the life of the party, and with this, political life in general, to stagnate, that it submerges personalities and fails to satisfy the wishes of the whole party and of the electorate. Too much, however, must not be made of these criticisms. There is a party bureaucracy in the United States without a system of proportional representation and with an elaborate system of primary elections. As George Decker points out: "Whoever wishes to fight the bureaucracy in his party should seek the possibility of reforming the inner life of his party in other directions. It is quite out of the question to find a panacea which will be good for all parties. Certainly the reform of the electoral system is no such means."⁴⁵ Nevertheless, the German election system aids the party machine and is very convenient for its purposes. Several slight changes would suffice to eliminate most of the serious objections to the system, although difficulties are inherent in proportional representation which could be obviated only by the adoption of another system.

With such a well-integrated party machine, one might well expect a close connection between the party and legislation. Since the leaders control the nomination and election of the members of the various legislative bodies of the country, they are in a strong position to control the action of these members after they have taken their seats. Such control clearly exists. Article 21 of the constitution of the Reich says that "the members of the Reichstag are representatives of the whole people. They are subject only to their own consciences and are not bound by any instructions." There are similar provisions in all the state constitutions.⁴⁶ But these pronouncements are quite meaningless; in practice, the member always votes as his "party fraction" has decided. There is really no independence in the German Reichstag at all. Everything is run on a cut and dried party basis. The rules of procedure give recognition, not to individual members, but only to "party fractions" of at least fif-

⁴⁵ *Die Gesellschaft*, vol. 5, no. 11, p. 395.

⁴⁶ Otto Ruthenberg, *Verfassungsgesetze des deutschen Reichs und der deutschen Länder* (Berlin, 1926).

teen members. Legislative proposals of members must be signed by at least fifteen members. Interpellations must be signed by thirty members, while small questions must be supported by fifteen members.⁴⁷ When large public questions are brought to the floor for discussion, each party decides who will speak for it, and these representatives appear in the order of their party's strength in the Reichstag. There is no real debate; in reality, all important matters have been decided in the committees.⁴⁸

When important legislative proposals are pending, the various party groups in legislative bodies, in city councils, in Landtags, or in the Reichstag itself, hold frequent meetings (caucuses, as we would call them) to decide what attitude the party shall take. Each party in the Reichstag, for instance, has a party room where these caucuses are held, and party groups meet several times during a week for purposes of deliberation. In these caucuses there is comparatively free discussion; but when the decision is taken, the utmost regularity is insisted upon and actually secured.⁴⁹ Furthermore, members of the Reichstag are required by their party rules to pay, on the average, one hundred marks a month in dues to the party treasury, which is another indication of the subservience of the member to his party.⁵⁰

This strong control of party members even after they have been elected to public positions is very satisfactory from the point of view of party responsibility. One can know exactly where each party stands, and the leaders cannot excuse themselves before the electorate by complaining about the difficulty

⁴⁷ See Geschäftsordnung für den Reichstag, sections 49-62.

⁴⁸ Consult a very readable and illuminating book by Walter Lambach, a member of the Reichstag, entitled *Die Herrschaft der Fünfhundert* (Berlin, 1926). This book describes the operations of the Reichstag and the work of its individual members.

⁴⁹ Koellreutter says: "The member is no longer the representative of the whole people but of a party." *Op. cit.*, p. 67. See also the excellent article in *Zeitschrift für Politik*, vol. 18, no. 3, pp. 137-146, entitled "Freies oder Imperatives Mandat." This writer points out how the party state has really overcome parliamentary democracy by so closely binding legislative members to their parties.

⁵⁰ Lambach, *op. cit.*, p. 17.

of holding party members in line.⁵¹ One difficulty in the matter of enforcing party responsibility, however, is the fact that there are so many parties that in order to form a government there must always be a coalition. In coming into a coalition, parties frequently must make very substantial compromises which are quite contrary to the avowed principles on which their members were elected to office.

This leads to several observations about the multiple party system as it has been worked out in Germany. One would naturally suppose that under a multiple party system issues and party programs would be clear-cut and easily differentiated. This, at any rate, is what the friends of such a system maintain. With the people of the country divided into nine groups instead of two, it should be much easier for each group to contain homogeneous elements which can work together. That is to say, they should be able to agree on definite principles and proposals and not write platitudinous platforms. These expectations, however, have not been fulfilled in the German multiple party system. The tendency has been to make platforms less important and the organization more important; that is, to be more general about policies, so that the party leaders may have more leeway. Then again, party platforms are mainly for elections, and consequently are not genuine party creeds nor statements of party principle which are of permanent value.

Interestingly enough, there is considerable overlapping in German party programs. Perhaps this is what makes any form of coöperation among the parties possible. Certainly there is no clear line of demarcation between the Democrats and the People's party, nor between one large section of the Center party and the Democrats and right-wing Social Democrats. In fact, even though there are nine parties in Germany, each one of them

⁵¹ It should not be overlooked that the party fractions in legislative bodies are always represented in party conventions and on various party committees. Here again the party leaders are given additional strength to put through their plans. Party fractions frequently publish reports to show the work which they have accomplished over a period of years. These reports are an indispensable source of information for anyone desiring to study the operations of the parliamentary system.

has a right wing and a left wing. One cannot possibly understand German parties without appreciating the views of the representatives of both wings of all parties.⁵² Perhaps this process of producing more parties in order to have each party represent certain definite interests and stand for certain definite principles is an endless one. In any event, there is no assurance from German experience that the more parties there are the clearer and more definite are the political issues. After all, one may only vote yes or no, and, regardless of how many parties exist, the people must combine into two groups before they vote. An electorate cannot make a decision on nine different issues, or even on several different issues, especially when there are numerous parties which indistinctly shade over into each other. "Are you for the government or are you against it," is all that one can reasonably ask an electorate to decide. To urge the people to vote Democratic so that the party will be well represented in the next government presupposes a knowledge among the voters of the intricacies of forming a cabinet. In the referendum on the princes' property there was a definite decision. When a president is elected, the people are able to make a decision, because they are not confused by the existence of several alternatives. The presence of a third candidate for the presidency in the run-off election of 1925 clearly demonstrates the difficulty of having more than two candidates to choose from. The successful one may not be the choice of the majority.⁵³

A further fact should be noted in this connection. The German constitution has provided for a parliamentary system of government, with a ministry responsible to the Reichstag, which is elected by the people voting under universal suffrage and proportional representation. With the Reichstag exactly representing the party divisions throughout the country, it should be

⁵² There is nearly as much incompatibility of opinion in several of the German parties as there is in either of the two great American parties.

⁵³ The election of Hindenburg in 1925 has proved to be a great boon to the German people, but his election was made possible by the Communist candidate attracting enough voters away from the more liberal presidential candidate who was running against Hindenburg. Hindenburg was not the majority choice. Such important matters should not be left to chance.

possible for a ministry to be formed which will carry out the will of the majority of the people as expressed at the polls. All ministries in Germany must, of course, be coalitions of several parties, but it should be possible to form a ministry which will give effect to the popular will. Allowing for the fact that Germany has had but brief experience with responsible government, it must be observed that the existence of numerous parties has greatly complicated the working of parliamentary government and has prevented the will of the people from being carried out. The parliamentary system works well only when there are two parties. The presence of more parties makes for confusion.⁵⁴

After the 1928 elections to the Reichstag, it was necessary, in order to form a government, to include representatives of the People's party in the coalition. Although the people had clearly spoken for a decidedly liberal government by swinging far to the left, the Socialist Chancellor had to compromise with "big business," as represented by the People's party, in order to form a government. The existence of a strong Communist party to some extent accounted for this necessary compromise, because this party refuses to work with any other party. But such compromises to meet the exigencies of parliamentary government are bound to occur as long as party relationships remain even approximately in the state they are now in. Germany apparently has to have many parties, and with many parties, proportional representation. But the result is certainly not satisfactory. The problem of parliamentary government under a multiple party system deserves the best thought that the Germans can give it.⁵⁵

The strength of the party organization is having another very noticeable effect. Not only is national legislation closely controlled by the party organizations, but we find national parties entering the sphere of local politics in order to fulfill their

⁵⁴ See *Jahrbuch des öffentlichen Rechts*, 1925, vol. 13, pp. 1-249, for an admirable summary of the experience of Germany under the Weimar constitution. Also Blachly and Oatman, *op. cit.*, p. 37, for the difficulties of cabinet government under a multi-party system.

⁵⁵ Blachly and Oatman, *op. cit.*, p. 142.

purposes.⁵⁶ Local politics are shaped largely along national party lines. A Bürgermeister of one of the largest cities complained to the writer that now he is forced to listen in the city council to discussions of national questions which have no bearing upon the paving of *Landstrasse*, a problem which was then troubling him. The development of the party spirit throughout Germany has resulted in introducing politics into phases of government where not known before.

Inasmuch as the German states, eighteen in all, are governed by ministries operating under a parliamentary system of government, one might expect an undue emphasis on parliamentarism and all that goes with it. In fact, there appears to be an exaggeration of the importance of state politics; and this can be traced directly to the present type of state government. The writer recalls attending several sessions of the Landtag of the diminutive state of Thuringia. With all solemnity, legislators were discussing from the partisan point of view matters of very small importance. They had been elected as Communists or Nationalists to a body whose political importance was greatly inflated, and they were playing politics as they were expected to do. Such emphasis on state politics will probably disappear in time as Germany develops a more unified government. Today, state politics bulk too large for a country where state powers are relatively weak.⁵⁷

The existence of numerous "splinter parties" is another feature of the present party system that deserves attention. The electoral laws at first permitted a small number of persons to nominate a list and thus constitute themselves a party.⁵⁸ As this privilege was abused, several of the states enacted changes which required nomination lists to be signed by 3,000 or 5,000 or 7,000 voters. Some states adopted the English practice of requiring money deposits, to be forfeited unless the new party

⁵⁶ See the excellent article on this subject by Professor Wells in the *National Municipal Review*, vol. 17, pp. 473-481.

⁵⁷ See Erich Koch-Weser, *Einheitsstaat und Selbstverwaltung* (Berlin, 1928), for a good discussion of this point.

⁵⁸ Walter Jellinek, *Die deutschen Landtagswahlgesetze* (Berlin, 1926).

secured a certain percentage of the vote.⁵⁹ The Reichstag electoral law has continued to require only 500 signatures to a petition.⁶⁰ Unfortunately, in a series of cases presented to it by several of the aggrieved parties, the Supreme Court declared the new state requirements unconstitutional.⁶¹ Thereupon, a movement was started in the Reichstag to change the constitution so as to permit legislation of the sort desired, i.e., to prevent the small groups from cluttering up the ballot and making popular government difficult. Up to the dissolution of 1928, the parties were unable to agree; but the matter is still under consideration, and it is thought that within a short time the requisite constitutional authority will be given. In recent elections, hundreds of thousands of votes have been wasted on the "splinter parties," with the result that greater confusion has been produced in the minds of the voters.⁶²

IV. PARTY TENDENCIES

A recent writer has observed that "politics in Germany are, after all, a mental state—a *Weltanschauung*—and are not easily adaptable to change or circumstances."⁶³ This was undoubtedly the case before the war, a period referred to by Spengler as the time of "classical programs." Even today, parties constantly refer to themselves as "*Weltanschauungsparteien*," and occasionally the doctrines of some come into open conflict with the doctrines of others—a state of affairs which means absolute stoppage of action.⁶⁴ The recent conflict over the *Reichsschulgesetz* is a good illustration.

⁵⁹ The Reichsministerium des Innern prepared a *Denkschrift* in 1928 for the ministry which summarized all these features of the various state electoral laws.

⁶⁰ G. Kaisenberg, *Die Wahl zum Reichstag* (Berlin, 1924), p. 19.

⁶¹ These cases are discussed in *Archiv des öffentlichen Rechts*, vol. 15, no. 1, pp. 99-139 (1928).

⁶² In 1928 the Wulfmeyer family formed a party which was called "Law and Renter's Protection party." As the *Deutsche Allgemeine Zeitung* remarked: "Here is real anarchy—every family its own party!" One group whose list was finally thrown out called itself "*Ganz parteilos für des Volkes Wohl*."

⁶³ H. G. Daniels, *The Rise of the German Republic* (N. Y., 1928), p. 85.

⁶⁴ *Germania*, the official organ of the Center party, in its issue of April 21, 1925, said: "Weltanschauung und Politik lassen sich nicht trennen. Diesen Satz hat keine Partei entschiedener und konsequenter vertreten als das Zentrum. . . . Das Zentrum ist also ausgesprochen Weltanschauungspartei."

The whole tendency of German parties is in the direction of becoming representatives of particular economic or class interests.⁶⁵ In the economic and social world there has been a very rapid development of organizations of one sort or another to represent the workers, the officials, the peasants, the employers, the various professions, and what not. These organizations are almost without number. They exist for the purpose of furthering the interests of their groups. With the growth in the powers of government and the assumption by the state of control over vast fields of economic activity, these groups, to achieve their ends, must operate by and through the agencies which carry the government, namely, political parties. If the peasants find themselves in a critical condition, they beg the government for assistance, and they bring the pressure of their membership to bear upon certain parties which they have generally supported. The great organized trade unions, whether *Freie Gewerkschaften* or *Christliche Gewerkschaften*, operate similarly through the two parties which they practically dominate.

Such influence is not merely periodic. It is not brought to bear upon parties merely in times of crisis. It is a constant influence which has come to affect the life of political parties very vitally. As a keen German observer has written: "Everyone who observes public life must recognize the ever-increasing preponderance of these organizations, must recognize how the power of political parties is becoming more and more restricted, as these interests which stand behind the parties prevail more and more in political actions. One must see how the declarations of the pressure groups cease to amount merely to expressions of opinion not binding upon the parties and the candidates, as the candidates become representatives acting for the various pressure groups."⁶⁶

Characteristic of the development of political parties as parties of interests is the specialization of their programs so as to appeal, not to the entire electorate, but to particular

⁶⁵ Koellreutter, *op. cit.*, pp. 55-61.

⁶⁶ Lederer, "Das ökonomische Element und die politische Idee im modernen Parteiwesen," in *Zeitschrift für Politik*, vol. 5, p. 535 ff.

interests in the electorate.⁶⁷ The program of the Economic party is an excellent example of this tendency,⁶⁸ and the numerous small parties which have come into being in the Reich have shown a similar disposition to appeal to particular interests, such as the renters, the house owners, and the small peasants. Nor is this tendency limited to the lesser parties. One needs only to study the composition of the electoral lists nominated by the larger parties to appreciate the great power of economic and class interests in them also. It would seem that a candidate's place on his party's list depends very largely upon the strength of the particular interest which he represents in the party. It would be a most profitable study, and one which would uncover the springs of party control and party action, to analyze the *Wahlvorschl"ge* of the various parties in several elections in order to ascertain the economic interest which each candidate represents, together with the place on the list which such candidate secures, and to find whether this place is in proportion to the power of that interest within the party. The writer is not here raising any question of propriety. He is merely pointing out how various interests bring influence to bear upon political parties to secure the nomination and election of representatives who will be favorable to their requests. The making of the party lists has now come to be a highly developed art, though one not generally appreciated. Only now and then are there complaints loud enough to attract public attention.⁶⁹ The party managers seemingly understand their jobs.

It is very difficult to determine the exact significance of the development just described. Are the interests served at the expense of the mass of the people, or are the political parties sufficiently representative of and true to the desires of the whole nation to yield to economic or social pressure only when

⁶⁷ Koellreutter, *op. cit.*, p. 41.

⁶⁸ See the *Handbuch der Wirtschaftspartei des deutschen Mittelstandes für die Reichstags- und Gemeindewahlen 1924*.

⁶⁹ In the spring of 1928 the People's party was unable to nominate Dr. Hans Luther as had been desired because of the insistence of one of the strong elements in the party that its representative should have the place intended for Dr. Luther.

to yield is to benefit the people? It is notorious that lobbyists of the American variety are not needed in the German Reichstag, for every important interest is represented in that body by at least one member. *Reichstagsabgeordneter* so-and-so is a director in a great industrial establishment; another is secretary of the Wine Growers' Association; another is a district secretary of a powerful trade union. Lobbyists are obviously not required. Just what influence these members have upon their parties, and how much outside influence is brought to bear upon the party leaders by the interest affected, it is difficult to say. Clearly this is a problem of great importance to a free people. The relation of the party organization and the party process to the economic organization must be reckoned as one of the prime factors in the future adjustment and adaptation of the German party system.⁷⁰

No discussion of any phase of German political life would be complete without some reference to the official bureaucracy, which has performed the work of government in Germany with great distinction. The adoption of the Weimar constitution has not resulted in any change in the rights of the officials. Article 130 affirms that "the officials are servants of all the people and not of a party." This provision was inserted to prevent a politicising of the government services and to protect the status of the government officials. Unquestionably, these officials have been the backbone of government in Germany, and although they are now serving a democratic republic whereas formerly they served the monarchy, their position is still unassailable, and they constitute probably the greatest single factor in government. The development of parliamentary government in Germany has not succeeded in making subservient *Das Beamtentum*, as the Germans call the official class.

In Germany, ministers do not have to be members of Parliament. As *Fachminister*, or expert, one needs only the confidence of Parliament, without being a member of it; and it is

⁷⁰ This problem is not limited to Germany. The relationships between parties and interests is very important in England, France, and the United States.

interesting to learn that since the Revolution of 1918 the number of *Fachminister* who are not members of parliaments, either in the Reich or in the *Länder*, has been on the increase.⁷¹

If the adoption of parliamentary government has not disturbed the position of the *Beamtentum*, how about the effect of the growth of political parties on these same officials? Have political parties been able to force the permanent civil service to become their servants, or is the permanent civil service putting limits upon the activities of political parties? The answer can readily be given. The officials have not become the servants of political parties, and quite clearly have been able to thwart any attempts to politicize the services.⁷² In the cities, political influence has been greater than in the state and national government services, and a considerable change in the official personnel is gradually coming about. But in the national services the permanent officials continue to have a very great influence, and have been able to guard their independence. Party favoritism is, of course, present, and a number of the higher positions are given as rewards for party favors. A political minister naturally must have the power to name his most intimate advisers. Aside from such positions, however, party considerations are not determining. The official hierarchy remains strongly entrenched and highly respected. A strong barrier thus exists to put limits to purely political actions. Democracy is checked.

There exists, therefore, in Germany what might be called a balance wheel, which has the effect of correcting some of the excesses in which political parties are prone to indulge. It is difficult in Germany to determine when a political party has a popular mandate to do something, but even when it is clear that a party has such a mandate, there remains the official bureaucracy, which has the power to alter, if not to reject. The same high respect is paid to the official class as before the war, and it is one class which, since the law of 1928, is relatively well paid.

⁷¹ *Jahrbuch des öffentlichen Rechts*, vol. 13 (1925), p. 165 ff.

⁷² See the excellent discussion of the question in Koellreutter, *op. cit.*, pp. 78-86.

Two other questions about the German party system should be raised. The first relates to the participation of women in public life; the second to the political education of leaders and people. Recalling that until the Revolution of 1918 women did not have the right to vote in Germany except to a limited extent in certain local elections, one should not expect the feminine influence as yet to have become very great. Nevertheless, many outstanding women leaders have been developed.⁷³ All the parties carry on activities among women⁷⁴ and occasionally elect women to office.⁷⁵ The number of feminine office-holders, however, is not imposing. In the Reichstag there have been, on the average, only thirty women members, half of these belonging to the Social Democratic party. Even in this party, out of a total of approximately 500 members of provincial Landtags in 1927, only twenty-six were women.⁷⁶ Additional illustrations would only serve to strengthen the statement that women have not been properly recognized in the new Germany. Undoubtedly their lot has been improved, and their influence is not to be laughed at. But the parties have not seen fit to give them anything like an equal status with men. Leaders have observed that it is very difficult to elect women to office; and such is undoubtedly the case. Were it not for the list system of proportional representation, there would not be as many women legislators as at present. Under the existing law, parties can insert the name of a woman in a party list and the voters may not be aware that the name is there. It might be remarked further that a party almost always has one or more women on its party list, but they are usually far down on the list, without much chance of election.

⁷³ For instance, Dr. Gertrud Bäumer, the leader of the German women's movement.

⁷⁴ Every party has a *Reichsfrauenausschuss*, with sub-committees in each district of the country. National conferences of women members are called at least once a year.

⁷⁵ The following are a few of the women members of the Reichstag: Dr. Bäumer, Dr. Lüders, Neuhaus, Philipp, von Sperber, Juchacz, Schroeder, Dr. Matz.

⁷⁶ *Jahrbuch der Sozialdemokratie*, 1927, p. 219.

Regarding the political education of leaders and people, much could be written. One of the interesting projects launched since the war is the *Deutsche Hochschule für Politik* in Berlin. This institution consists of some of the more advanced students of the University of Berlin who are bent upon further study in political science, as well as officials of the Reich, the states, and the municipalities, young diplomats, officers, teachers, editors, workingmen, and secretaries and leaders of political and economic organizations.⁷⁷ Courses are provided also in different parts of the Reich, and the Institute is thereby able to reach a large number of people. The whole project is very promising and indicates that the Germans appreciate the desirability of applying the scientific method to politics. A school similar to the Institute is to be established in Hamburg. Impetus is thereby given to training for public service. Such education is bound to be reflected in an improved personnel, not only in the government services, but also in the party bureaucracies. There is some evidence that party work is attracting a fair proportion of the able young people. As democratic government becomes more settled, and life assumes a more normal routine, this important phase of party development will come into clearer view.

V. CONCLUSION

The first decade of self-government in Germany has sufficed to establish the fundamental features of the party system. During this period there has been a noticeable improvement in party spirit. There is still some bitterness, but members of the various parties have reached the stage where they can differ without becoming mortal enemies. In times of cabinet crises, no love is lost; but once the solution appears, members of opposite parties hob-nob with each other as before. The Communists and Hitlerites are still somewhat wild and uncontrollable. Aside from these two irreconcilable groups, however, little disturbance is caused in legislative bodies, and there is nothing approaching the disorder of the French Chamber or the Czech Parliament.

⁷⁷ Dr. Ernst Jäckh is the director of the School. See his valuable little book, *The New Germany*, pp. 63-66.

Even elections are calmer. Few meetings are broken up, and if at all, only by extremist groups. The bulk of the electors prefer order to disorder. "*Ordnung muss sein.*" Most election meetings are for the party members, and interruptions by intruders are frowned upon.

For several years there was much party warfare in the real sense. Various *ausserparlamentarische Verbände*, such as the *Stahlhelm* and the *Reichsbanner*, acted as the shock troops of their respective parties.⁷⁸ When the *Stahlhelm* proceeded to break up meetings of the parties of the Left, these parties organized the *Reichsbanner* for their protection. Several pitched battles ensued. Today, however, even though these organizations still exist, and meet regularly and parade—they do not exert much influence. Still, German politics has not yet returned to normalcy, and such organizations cannot be dispensed with completely.

It is hazardous to speak of the future. Although the fundamentals of the party system now appear to be fixed, much depends upon the events of the next few years. An especially weighty factor is the future of the Center party.⁷⁹ Standing as it does midway between the Right and the Left, this party prevents a merging of all the parties into two large parties.⁸⁰ The Center is made up of both Left and Right adherents, and without its aid no cabinet can be erected. It has therefore been in every coalition since the formation of the republic. As long as it remains a separate political entity—and there are no signs that it will cease to do so—Germany can hope for a two-party system, but is not likely to attain it. There is now really a five-party system, and from all indications such a system will continue, whether P. R. continues or not.⁸¹ The fact is that Ger-

⁷⁸ See *Das Junge Zentrum*, vol. 4, no. 3, pp. 58–72 (March, 1927), for a discussion of these organizations.

⁷⁹ See Georg Schreiber, *Politisches Jahrbuch*, 1925, p. 47.

⁸⁰ Consult the article by Hermann Port on "The Two-Party System and the Center Party," in *Hochland*, vol. 22, pp. 369 ff. (1924–25).

⁸¹ With an electoral system similar to the German, Austria has but three parties.

many never has been a two-party country, and with existing fundamental cleavages is not likely to become one.

In certain circles there is strong opposition to partyism in any form. "Why have any parties?," asks the *Jungdeutsche Orden*, seeing in parties the main cause of all that is wrong. Why not a state modelled after the ideal of Freiherr von Stein—a real people's state, but not a democracy, and not a party state? There is much sympathy with this viewpoint. But such an ideal seems impossible of realization. Democratic government must have parties; and since Germany has determined to have democratic government, it has already answered the question as to whether it will have parties.

To summarize, Germany has developed a party system which is unique in the world. As in England and America, strong and more or less permanent parties have been formed. In contrast with France, where there is also a multiple-party system, the Germans have formed political parties which are not volatile, evanescent groupings. The Czechoslovak parties do not furnish a very close comparison with the German parties, because they are not so well organized, are much more numerous, and are less permanent. The three parties in Austria are not unlike their counterparts in Germany, so far as organization and work is concerned, but the system operates in an entirely different way. Nowhere in the world can one find stronger and more effective party discipline than in Germany, and only in England can one find party organizations so well developed. Not even in England does the party machinery function more smoothly than in the Reich. Using the British party system, perhaps unconsciously, as a model, the Germans have worked out a system of their own which is accommodated to their needs. The whole country is covered with a network of political organizations, each constantly directed by a machine as strongly entrenched as any in the world.

Political independence is, therefore, not very highly developed within the parties, and in legislation, party has a controlling force. In administration, the party influence is successfully checked, although not completely eliminated. The official

bureaucracy, as powerful as before the war, serves as a sort of balance wheel to political action. Despite the presence of nine parties, there is considerable overlapping in party programs, indicating that even in a multiple-party system it is difficult to develop clear-cut differences between parties. Due to present legal requirements, the country has been afflicted with too many "splinter parties." But this affliction will not be permanent. The constant party activity which is going on has already had the effect of arousing the political consciousness of the people, and has been responsible for a highly creditable popular interest in government, and for satisfactory popular participation in elections.⁸² Finally, the tendency of German parties to represent class or economic interests is very marked.

These are observations upon a party system only ten years old. During the decade in which it was developed, Germany was hard pressed with internal and external difficulties. Problems of government could not, therefore, be considered adequately. Despite these trying conditions, the Germans have made a remarkable start in developing the machinery necessary to keep a democracy going. Although party relationships are still somewhat in a state of flux, the fundamentals of the party system as outlined above are now quite definitely fixed. Germany is, and will probably remain, a country with many parties, the organization and activities of which will be worth watching as significant experiments in the life of a great democracy.

⁸² Professor Wells has written a brief, but excellent, article on "Non-voting in Germany," which appeared in *The Historical Outlook*, vol. 19, pp. 267-269 (October, 1928). The article explains Germany's voting record.

THE BRITISH POLITICAL SCENE SINCE THE GENERAL ELECTION

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A general election has been aptly compared to an instantaneous photograph of a galloping horse. It is a static representation of a public opinion that is by its very essence perpetually changing, and a newly elected House of Commons has not yet met before it is in a sense out of date and no longer fully representative. Even if a general election photograph had permanent significance, it would be open to the criticism of inaccuracy at the time of taking. Readers of this *Review* are aware of the misleading character of the British electoral machine—of the fact that whenever more than two candidates contest a constituency, the one elected may very well represent but a fraction over a third of the electorate; so that election statistics show a serious discrepancy between the distribution of votes and the allocation of seats.

On the eve of dissolution, the House of Commons comprised 400 Conservative, 162 Socialist, and 46 Liberal members, with seven Independents. The new House comprises 289 Socialists, 260 Conservatives, 59 Liberals, and seven Independents.¹ This distribution of seats, we have said, does not accurately correspond to that of votes cast, since the Socialists polled 8,370,005 votes, the Conservatives 8,641,170, and the Liberals 5,295,308. The usual explanation of the discrepancy is that the Labor party had all the luck of the three-cornered contests in which a minority candidate was returned. This, however, happens to be false; that luck went to the Conservatives: of 313 successful "minority" candidates, 153 are Conservatives, 122 Socialists, and 38 Liberals; while of 291 seats held by a clear

¹ These figures vary slightly according to the classification given to certain Independent members, who are usually in fact closely connected with one of the three parties.

majority, Socialists have 166, Conservatives 105, and Liberals 20.

A more satisfactory explanation is the fact that the Conservative party can claim the allegiance of the vast majority of plural voters, i.e., of those entitled to two votes either because of having a university vote or of having residential qualifications in two different constituencies. The ignoring of the plural vote would probably make the Conservative and Socialist votes about equal, so that their relation to the Liberal party is expressed accurately enough by the figures 8-8-5, and that of their seats by $5\frac{1}{2}$ - $4\frac{1}{2}$ -1. The discrepancy still remaining is really due to the fact that the Conservatives still have the greatest number of safe strongholds in which they can count on enormous majorities, though electing only one candidate. The Conservative grip upon such counties as Surrey, Sussex, most of Hampshire and of Kent, and over "dormitory" suburbs, is evidently still unshaken. There are about 150 constituencies in which the Socialist or Liberal candidate has not as yet the shadow of a chance; the number of industrial seats which are the safe preserve of Socialism is nothing like as large; and, speaking generally, Socialist majorities were smaller than Conservative, although more numerous. Hence the fact that it took fewer votes (29,000) to elect a Socialist than a Conservative (31,000). As to the position of the Liberals, it is of course easily explained by the large number of candidates polling a considerable number of votes but coming in bad seconds or thirds.

Important as it is, it should be remembered that this discrepancy is nothing like as serious as those which characterized previous parliaments. It is unnecessary to burden readers with a mass of statistics; the following figures are both simple and eloquent:

<i>Election</i>	<i>Percentage obtained of</i>			<i>Number of seats obtained</i>		
	<i>total number of votes cast</i>					
	<i>Con.</i>	<i>Soc.</i>	<i>Lib.</i>	<i>Con.</i>	<i>Soc.</i>	<i>Lib.</i>
1922	38	29	30	347	142	114
1923	38	30	30	253	191	157
1924	48	32	18	420	151	40
1929	38	36	25	260	289	59

From this it is clear that if we except the "Moscow scare" swing-over in 1924, post-war Conservatism has been a static force and that the growth of the Socialists has been at the expense of the Liberals. The increase in the electorate has thus had no appreciable influence on Conservatism, though it seems to have benefited Socialism more than Liberalism. In other words, ever since the war, Conservatism proper has formed in the country a large, strong minority which remains unshaken by Socialist propaganda, while Socialism has been steadily growing and Liberalism steadily declining. It is clear, therefore, that what has to be accounted for is not a Conservative *débacle*, nor any large shifting of public opinion. Everybody knew that the Conservatives could not hope to maintain the abnormal advantage given to them by the circumstances of the 1924 election; the only question was as to how much ground they would lose. Now all that has really happened is a return to 1922 and 1923, i. e., the loss of the temporary Liberal contingent stampeded by the Zinoviev letter. As it happened, the Conservatives found themselves in a parliamentary minority even smaller than in 1923; but they might easily have finally done either as well as then, or, better still, as well as in 1922, returning with a small clear majority. Just as a very small turnover one way could have yielded a clear Socialist majority, so a small turnover the other way would have seen Mr. Baldwin's "triumphant" return. Three-figure majorities in constituencies numbering thousands of electors are really very meaningless.

The Conservatives' "failure" therefore amounted to this: they failed, first, to retain the support of right-wing Liberals; second, to win from their allegiance regular supporters of the two parties; and, finally, to secure more than about a third of the new young women electors politely called by the yellow press "the flappers." Now this triple phenomenon, whatever its exact causes, could have been foretold, and was in fact expected, by most serious students of the situation, and it reveals nothing that need cause the high-priests of the party to cry out and cut themselves with knives, or to seek for propitiatory victims. It only indicates that under a three-party system there

can normally be no clear majority for any one, and that the appeal of Conservatism is now clearly limited to certain definite classes of the population—those who are afraid of any drastic alteration of the present property system and opposed to any widespread interference of the state in economic affairs (this in common with a number of Liberals), but believe that protection would prove a valuable remedy for the present distress of British industry and are suspicious of such developments in international coöperation as might seem to weaken seriously the British Empire's unity and control over its own affairs (here separating themselves from the Liberals). None but the blindest believer in the divine right of Conservatism could really expect this program to sweep the country. It would seem, on the contrary, that cool, critical judges should be well satisfied that what was at best a somewhat cautious and negative policy should still hold to their allegiance nearly four electors out of ten, particularly when the party was fighting what all knew to be a difficult, defensive battle after a not over-glorious tenure of office, in a period of acute trade depression and discontent, and with Liberalism making a desperate and unprecedented effort to regain its old ascendancy. What the Conservative party must now do is to resign itself to the fact that, under the present system, it is, like the two others, but a minority in a country which is no longer "Conservative at heart," as some Tory papers still like to call it—if it ever was.

From all this it is also clear that we are not called upon to explain any "going over to Socialism" on a large scale. The Labor party again increased its poll, both in its total and in its proportion to the electorate, as it has done in every election since its foundation, and has therefore every reason to be satisfied, quite apart from its luck in the distribution of seats. This steady increase probably represents an increase in actual believers in Socialism, particularly among the middle class; but many of the new supporters are people of no strong party allegiance, who, being distinctly hostile to Conservatism, preferred, on the whole, to trust Mr. MacDonald rather than Mr. Lloyd George with a policy of free trade, international coöperation,

and somewhat bolder measures in dealing with unemployment.

The real meaning of the election is, therefore, not so much the "defeat" of Conservatism as the obviously final displacement of Liberalism by Labor as the chief Left party. The figures already quoted are significant, and the process is not likely to be seriously checked, much less reversed. Electoral reform may give the Liberals more seats, but there seems no reason why, at any subsequent election of the next few years, they should poll many more votes.

It is true, of course, that the Liberal party went to the battle with certain handicaps, of which the personality of Mr. Lloyd George was not the least, and another the possible reluctance of many to support a party that really had no chance of getting back into power: "a vote given to a Liberal candidate is a vote wasted" was both a Conservative and a Socialist slogan. But these handicaps were more apparent than real; the party had enormous funds and had been carrying on, long before the election, far more thorough propaganda than either of the others; the leadership of Mr. Lloyd George was unanimously accepted, even by some of the most severe critics of his war record; the party program was, if anything, bolder and more radical than that of Labor, and could reasonably have been expected to make a strong appeal to hundreds of thousands who were both dissatisfied with Mr. Baldwin's record and suspicious of the alleged revolutionary tendencies, if not of Mr. MacDonald, at least of his more extreme supporters.

The Liberal expectations of a "sensational revival of trust in Liberalism and a general desire to see the affairs of the nation once more placed in the hands of a Liberal administration," to quote Mr. Lloyd George's election address—the *Nation's* forecast of well over 130 Liberal seats²—could apparently be defended without unreasonable optimism. There is, therefore, a definite Liberal failure to account for. First of all should be mentioned lack of leadership. The distrust in which Mr. Lloyd George is now widely held extends in many minds to those other

² Which, of course, they would have had, and fifteen more, had their seats corresponded to their actual poll.

prominent Liberals who are prepared to accept his leadership in spite of the dis-services he has rendered to the Liberal cause since he superseded Mr. Asquith in 1916. Closely allied to this is the fact that no one of these other leaders is capable of a strong popular appeal: Samuel, Simon, Muir, Keynes—all able, conscientious men, clear thinkers—but not chiefs of a people's party; and while no party can hope to succeed without some men to supply the cold, clear thinking, it must also possess men capable of challenging people's hearts as well as their heads.

Another very important point will take us deeper into national psychology, to use that much-abused term. All students of British politics know that ever since the days of Gladstone, and even earlier, the Nonconformists have been the backbone of the Liberal party. This is no longer true, and for two reasons. In the first place, the village chapels have, in many cases, gone over to Labor. Many a "local preacher" who in 1905 was an apostle of Liberalism has moved on to an allegiance which to him represents more truly the moral fervor and spiritual zeal for which Liberal Radicalism stood a quarter of a century ago. The more conventional suburban Nonconformist, on the other hand, is now as likely as not to vote Conservative, unless he be an ardent free trader or an exceptionally zealous internationalist, and this because there is no longer a political cause to be identified with Nonconformist interests.

The Liberal-Nonconformist pact was a reality as long as the political party stood for the recognition of certain rights claimed or defended by the non-established churches. But these issues are dead. Not only are the bitter education controversies of 1902-10 now forgotten, but the social inferiority from which Dissent suffered is now largely a thing of the past. Only in a few villages, or in exceptionally exclusive circles, is Nonconformity in any sense a social or political disability.³ Having won its battle, it no longer needs a champion.⁴

³ The spirit of unity created by the war was the real destroyer of the barrier that divided the Church from Dissenters. Even disestablishment is no longer a live issue among the latter; it is demanded only by some of the Catholic sections of the Anglican Church.

⁴ The areas in which Liberalism remains strong are precisely those in which

One should, however, go deeper still. To a large extent, it is not only the Liberal-Nonconformist alliance that has disappeared; it is the "Nonconformist conscience" itself. Along one line it may be said that it has so profoundly influenced national life as a whole that its expression is no longer the monopoly of one party or of one church; but it can also be argued that many of the tenets and principles which used to be associated with it are no longer held by any save a small and rapidly diminishing fraction. In so far as the term really meant Puritanism, it has lost all significance: what remains of good in the Puritan tradition is no longer specifically Nonconformist; and on its narrower, less admirable side it is no longer a social force.

The Liberal party is thus no longer able to count on the unquestioning support of the Dissenting churches, even though Mr. Lloyd George remains an ardent chapel-goer. Nonconformity not only supplies much of the Labor contingent; it has given the Conservatives a premier (Mr. Bonar Law) and many ministers (including those from the Chamberlain family). The last remnant of identification of church with party may thus be said to have disappeared; it had in fact disappeared before the last election, as was shown in the non-party divisions over prayer-book reform and the utter collapse of the very feeble attempt then to revive disestablishment as a political issue. Another illustration of the same point is the existence of the Socialist Roman Catholics—a combination that would be unthinkable on the Continent.

Before we pass on, one point should be noted and dismissed. The Conservatives contend that the election showed a clear anti-Socialist majority—fourteen million votes to eight million, 320 seats to 290. (It may, in fact, be admitted that this majority is even larger, since some of the Labor vote can scarcely be described as "Socialist"). But "Socialism" was in no sense the dominant issue. That issue was, rather, the continuation of Conservative policy; and in that sense the Conservative representa-

there remains a strong Nonconformist tradition—Cornwall, Devon, Bedford, East Anglia.

tion of 260, with eight and one-half million votes, as against an anti-Conservative representation of 350, with thirteen and one-half million votes, is fairly exact. The most cursory study of the Liberal press, both before and since the election, shows that Liberals thought Mr. MacDonald a lesser evil than Mr. Baldwin; and one Liberal candidate after another has declared that, had he not stood, most of his poll would have gone to the Socialist candidate—which is to say that the institution of the “alternative vote” would at present secure the election of an anti-Conservative candidate in nearly every constituency where the Conservatives had no absolute majority (and we have seen that there are 153 of these). This is not to deny, of course, that at some future election Socialism or no-Socialism may become the dominant feature; and how the present Liberal forces would then divide themselves it is impossible to predict.

Putting aside party considerations, we can now analyze the national verdict in its general lines and say that the country very definitely thought Conservative policy to have been too passive against unemployment, too much afraid of socialism to use state funds and credit for employment schemes instead of paying out millions in relief, too timid in its half-hearted attitude toward disarmament and arbitration, too cold to its friends in the United States,⁵ too warm toward nationalist tendencies in France and Italy, foolhardy in its handling of the so-called general strike of 1926 and in the passing of the Trade Disputes Act of 1927—cautious, in a word, where it should have been bold, rash where it should have been wary; while its choice as an election slogan of “Safety First” showed a deplorable lack of psychological imagination. What it did, in a word, was to forget youth. It put middle age in its safe seats and in its positions of responsibility; it put forward a program of middle-aged staidness, and forgot that it was not appealing to the middle-aged electorate. From this it is clear that Mr. Garvin is right when he proclaims in the *Observer*, first, that “however good your record may be,

⁵ “Nothing whatever did the late Government so much harm as the feeling which spread throughout the country last year that they had a chilling and unlucky touch in Anglo-American relations.” *Observer*.

it is better to fight chiefly on your program when you are asking democracy to entrust you with a renewed term of power for five years to come;" next, that "while there is every hope in the revival of a wider Unionism, in Conservatism by itself there is absolutely none." Will that "wider Unionism" be the present Conservative party reconstituted and reformed? Will it be, as some demand, "a new Constitutionalist party to embrace all that is best in the defunct Unionist and Liberal parties to combat Socialism?" No one can tell. But we venture to prophesy that no drastic reorganization of parties is likely to take place as long as the present electoral system remains. Such changes, if really far-reaching, would not be unanimous, and a divided Conservative party would be helpless before its rivals. Under proportional representation things might be different; but the problem would then arise as to who was the true heir to party funds and machinery—a problem that party reformers can never ignore.

We may pause here to ask whether the present electoral system—the present gamble—is to be retained; or whether the three parties will unite on such a scheme of proportional representation, alternative vote, etc., as would give an exact mathematical ratio between votes and seats obtained, or at least some approximate equality that could be generally accepted. It is evident that such a reform is to the *immediate* interest of only the Liberal party. Conservatives and Socialists have each upon occasion experienced the luck of the present system and would not be unwilling to trust to luck next time. The former see, of course, the danger of the next time yielding a Labor majority in Parliament on a minority total poll, as nearly happened this time; while the Socialists also see the danger of a repetition of 1924. But both Conservatives and Socialists see clearly enough that the present system means death to third parties, and that it must ultimately force the Liberal voter into one of the other camps; for people will soon get tired of throwing their votes away on candidates who have no chance of being elected. If a return to the two-party system is the real need of the day, then "hands off the present system" is the obvious policy; and it can be success-

ful, provided Mr. MacDonald and Mr. Baldwin agree to resist any offer of Liberal help against the other in exchange for electoral reform. The superficial advantages of the two-party system are too obvious to need repeating. So are the drawbacks of proportional representation. It need only be pointed out that the latter would not only perpetuate the three-party system and probably rule out for many years the possibility of a clear majority in country or Parliament, with the inevitable ministerial instability, bargaining, etc., but that it would very probably lead to the formation within the main parties of groups claiming distinct representation and rapidly turning into parties proper. It is no exaggeration to say that only the compelling need of electoral unity keeps together the very heterogeneous elements that make up existing parties.

Before zealous Conservatives and Socialists decide on the retention of the status quo, with the implied death-warrant of the Liberal party, they should realize, however, that by so doing they are not killing Liberalism as a tradition and as an outlook, but are rather absorbing it into their own systems. The disappearance of the Liberal party would mean, not that of the Liberal voter, but only his support of Conservative or Socialist policies, not out of genuine conviction, but as the lesser of two evils. Is this likely to make for clarity in politics? Further, will not these half-hearted supporters act as a brake on any resolute policy, Conservative or Socialist? In a word, will the change not mean, to a large extent, the liberalizing of both parties?

To this argument, cogently set forth by Mr. Brailsford in the *New Leader* for July 5, the only answer to be made is that much the same is bound to happen under any scheme of electoral reform. The real point of such reform being to prevent any party from gaining artificial strength at the expense of the other, and particularly at the expense of the Liberal party, no clear majority is likely to emerge, and Conservatives or Socialists will have to depend for their exercise of power upon the tolerance, if not the active support, of the center party, i. e., they will have to carry out a Liberal policy—which is virtually what Mr. MacDonald has announced his intention of doing. Whether it is

better for this Liberal influence to be exercised openly by votes in the House, or secretly by influence within nominally Conservative or Socialist party councils, is an interesting question. From his allusion in the King's Speech to electoral changes, Mr. MacDonald evidently means to see, at any rate, whether electoral honesty be not ultimately the better policy for everybody; and be it noted that he can at the same time deal a shrewd blow to the Conservative party by the suppression of plural voting and of non-geographical constituencies like the universities.

"The new parliament," we quoted the *Daily News* as saying, "will be very different from the old;" and it is interesting to note how different its social personnel—apart from its party composition—indeed is.⁶ The number of soldiers, sailors, big business men, and rentiers is the smallest ever known; the number of lawyers is less by half than in any previous parliament since 1832; while trade union officials number 150, which is quite out of proportion to any previous figure. Barely a tenth of the House belongs to the hereditary aristocracy, instead of the usual fifth. The six great public schools have 121 representatives, as against nearly 200 formerly; the number of Oxford and Cambridge graduates has diminished by half. There are six clergymen and 24 teachers—a high figure in both cases—and a record number of fourteen women (eight of independent means, two trade unionists, one doctor, one writer, one teacher, one party official). Finally, only 132 members are entirely new to Parliament, and more than half (331) have had experience in local government.

Other features that are worth mentioning are the smallness of the Communist poll (300,000), the defeat of many of the most promising young Conservatives, and the defeat of the opponents of drink traffic limitation. Whereas practically all "temperance stalwarts" (of all parties) were returned (including Lady Astor), the candidates backed by the *Morning Advertiser* (the official organ of "the trade") were nearly all defeated. The "Fellowship of Freedom and Reform," which is a body formed for opposing local option, saw six of its vice-presidents defeated, and the solu-

⁶ I am indebted for the details following to an article by Professor Laski in *Time and Tide* for June 7.

tion of the major problem along lines of local option is one of the most likely results of the election.

To turn now to the future, one thing seems clear, i.e., that no one wants another election soon, so that the party which precipitated such an election by a shortsighted defeat of the Labor cabinet would appear in a very unpopular light. No one desires a return to the kaleidoscopic elections of 1922, 1923, and 1924. Not only so, but it is evident that for his present program Mr. MacDonald can count on the support of practically all Liberals and not a few Conservatives. At home, no bold measures which he may suggest are likely to go beyond proposals made by the Liberals last May and endorsed, if practicable, by a considerable section of Conservative opinion. The handling of the situation in the coal fields and in India is likely to be difficult, but the Premier may well prefer to disappoint some of his extreme supporters rather than to try to force through policies doomed to a united opposition on the other side of the House. As to foreign affairs, neither in disarmament nor in arbitration nor in the evacuation of the Rhineland is Labor policy likely to go any further—or faster—than general public opinion will sanction.

Mr. MacDonald and his party will thus be given a very fair chance—not merely for the sake of national stability, or of “fair play,” but because many people outside his own party trust his personal character and are not sorry to see a change of governmental teams. It may well be, in fact, that the most dangerous of his enemies will be those of his own household. His repudiation of extremism before and during the election, his exclusion from office of one of the ablest of his 1924 lieutenants, Mr. Wheatley, the studiously moderate tones of the King’s Speech—all these have already awakened the criticisms of Mr. Maxton and the Labor left wing, many of whom believe Labor should not have taken office without a clear majority and a clear road to “socialism in our own time.” The opposition of this group would, of course, be offset by an increased measure of Liberal support in the present parliament. But such a division in Labor forces would be fraught with serious dangers when it came to making a fresh bid for electoral support in 1934, or earlier.

The successful carrying out of government by a minority cabinet implies, however, some conditions which may involve considerable changes in constitutional method. It is clear, in the first place, that no resignation must be offered or expected save as the result of a defeat on a major issue. The separating of divisions into those involving a deliberate vote of "no confidence" and those merely indicating disagreement with the government on a point of secondary importance not only would contribute to stability but would increase the freedom of the individual member, relax the over-anxious control of party machine and whips, and restore reality to debates in the House. Sir Herbert Samuel, replying to the Premier's suggestion that they should "consider themselves" more as a council of state and less as arrayed regiments facing each other in battle," so that "this parliament should more than previous parliaments act rather in its corporate capacity instead of considering it always necessary to divide itself on customary party lines," pointed out that for this to happen "the government must not look upon every question as a question of confidence . . . so that disagreement should not entail resignation"—this implying that the Liberals would comply with that condition.

Sir Herbert Samuel here added a few significant words: "So that disagreement should not entail the resignation of the government and *the possibility of a dissolution of Parliament.*" Now the right of a defeated prime minister to dissolve Parliament, however shortly after a general election, and before any recourse had been made by the sovereign to any other party leader, has been held hitherto to be one of the fundamental prerogatives of premiership, successfully upheld in 1923 and 1924. To vote against a government meant risking a dissolution and the loss of one's seat, so that such adverse votes would not be given lightly. But Sir Herbert clearly implies a departure from the tradition and says, in effect, that if defeated by a deliberate vote of a united opposition, Mr. MacDonald should be prepared to resign and let someone else try to form a ministry.

If parliamentary, as opposed to ministerial, responsibility be indeed the chief consideration, such an innovation is all to the

good. But it is easy to object that it would tend to make British politics approximate to French, wherein defeated ministers invariably resign and parliaments invariably go on to the end of their legal duration, with the result that deputies, secure in their tenure, are apt to play fast and loose with ministries, and that the right of a defeated cabinet to dissolve is now urged by many would-be constitutional reformers. In spite of the objection, however, there would seem strong reasons why the policy advocated by Sir Herbert should be tacitly agreed upon by all three parties. French analogies are, after all, misleading, the existence of numerous groups and of a plethora of would-be premiers creating a situation quite different from that bound up with the rigid three-party organization of Great Britain, with its strictly limited scope for party combinations and ministerial ambitions. While it is too risky to tell definitely whether the constitutional revolution just described will be realized, it seems probable, at any rate, that the days of "snap" defeats are over and that governments without clear majorities will carefully distinguish between policies in which they frankly seek the coöperation, and therefore the criticisms, of the House and those which they make peculiarly their own, by which to stand or fall.

Another point on which interesting constitutional departures may be expected is that of the relation of the cabinet to the upper house. Labor lords number at present but nine, which reduces debate to a farce and throws on those nine an intolerable burden. Many suggestions are put forward to remedy this state of affairs. Complete reform of the second chamber is obviously one. But that cannot be effected in a day, particularly as a reform in the composition of the House of Lords is scarcely possible without raising the whole problem of the Parliament Act of 1911 and the relations of the two houses; and no Labor government will be anxious to increase in any way the present powers of the upper house.

Meanwhile Mr. MacDonald is being urged in some quarters to create some twenty Labor peers. But this is more easily said than done. To take them from the House of Commons

would mean twenty by-elections; and even in selected constituencies this is an expensive and always risky business. If they are selected outside of Parliament, they can only be men⁷ who so far have refused to stand for Parliament; for it would be obviously impossible to send defeated candidates to the upper house save in very exceptional circumstances. These Labor peers could, therefore, only be prominent people sympathetic with the party but not prominently identified with it, or else leaders of Socialist thought who have hitherto eschewed an active political life. There are not many of sufficient quality available in either category; and when it is remembered that accepting a peerage—and living up to it—is very expensive business, and that wealthy Socialists are very few, it will be realized that the creation of a large batch of Labor peers is fraught with many difficulties.⁸

It has been suggested as a way out that members of the ministry should, as in several other countries, be allowed to address both houses on matters connected with their departments. That would be an important departure from precedent,⁹ but should raise no fundamental difficulties and would certainly ease the situation. It would not, however, solve the problem of the futility of upper house debates. The fact is that the problem of an hereditary second chamber working with a Socialist cabinet is insoluble.

It is clear, in conclusion, that the verdict of May, 1929, cannot be construed into a blank cheque either for revolution or for reaction. The general lines of policy will have to be approximately Liberal; and in a sense the Liberal party holds the key to the situation, although it cannot force any scheme

⁷ Women are still debarred from sitting in the upper house, even if peeresses in their own right.

⁸ A possible compromise would be the passing of a statute authorizing the creation of Lords of Parliament, sitting in the upper house, but without a peerage—on the analogy of the Lords of Appeal. But this legislation would require the consent of the upper house and is equivalent to permanent upper-chamber reform.

⁹ It might, as in France, enable cabinet posts to be entrusted to non-members of Parliament.

of its own against the united opposition of the other parties. It is also clear that the MacDonald cabinet is really in a far more secure position than would appear from its minority situation. Neither Mr. Baldwin nor Mr. Lloyd George is likely to turn it out to make the other king; and it commands the sympathy, and even support, of many in and out of Parliament who did not actually vote for it in May. It is more likely to fall through internal divisions, or through weakness in grappling with difficult problems, than from a concerted frontal attack; and neither division nor weakness is likely to appear for a considerable period of time—allowing always, of course, for the unexpected factors which Mr. Baldwin, with his swollen majority, was able to ignore, but which no prime minister can afford to neglect in the present state of British politics.

This much, at any rate, can be said—that the 1929 election probably marks what in British politics may be termed “normalcy,” i.e., the final elimination of “war factors”—not, indeed, of the consequences of the war (these will endure to the death of all now living and after), but of those legacies of the war which tended to divert people’s attention from real issues. The appeal to the Red Terror, the specter of Bolshevism, the consideration of world politics in terms of “allies” and “enemies”—all these distorting elements are gone. Gone also is the belief either in a swift, sudden revolution turning England into a Marxian paradise, or in a return to a blissful world of cheap living, peace in industry, and plentiful domestic service. Conservative, Liberal, and Socialist agree that society has to be rebuilt, and that the rebuilding cannot be the work either of one parliament or of one political party.

“Does the road wind uphill all the way?

Yes, to the very end.

Does the day’s journey take the whole long day?

From morn to night, my friend.”

LEGISLATIVE NOTES AND REVIEWS

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The Progress of Permanent Registration of Voters. Bills providing for the permanent registration of voters, following substantially the recommendations of the Committee on Election Administration of the National Municipal League, were introduced at the legislative sessions of 1929 in Pennsylvania, Ohio, Indiana, Missouri, Michigan, and California. These bills were passed by the legislatures of Indiana, Ohio, and Michigan, but the Indiana bill was pocket vetoed by the governor. In New York and Illinois permanent registration was considered in connection with proposals to create a special commission to study registration and election administration.

Ohio. There has been a strong movement for several years in Ohio to secure permanent registration in the place of the present annual system which prevails in the cities of the state. In 1926 the Democratic and Republican parties endorsed permanent registration in their state platforms. At the legislative session of 1927 the Citizens' League of Cleveland, the Ohio League of Women Voters, and the Ohio Institute were active in promoting such a bill. In that year an election bill was passed by the legislature, including, among other changes in the laws of the state, a permanent registration of voters. Governor Donahey, although an outstanding exponent of permanent registration, was forced to veto the bill because of other features. At the legislative session of this year several permanent registration bills were introduced, one backed by the Citizens' League of Cleveland, another by the League of Women Voters, and a third by the Ohio Chamber of Commerce. These various bills were finally merged and became a part of a new election code, which was passed by the legislature and became a law. The Citizens' League of Cleveland and the League of Women Voters were particularly active in backing the measure, although other civic organizations of the state supported it. The election code was based upon a preliminary draft prepared by Mr. Mayo Fesler, director of the Citizens' League of Cleveland, and a committee on election laws created by that organization. It is estimated that the new election law will save the state approximately one million dollars annually.

The new permanent registration law, which applies to cities of 16,000 population and over (it is optional for cities of smaller population), contains the following principal features: a general registration in every precinct at the start of the system, with precinct or central registration at the discretion of the county board of deputy supervisors thereafter; the use of card or loose-leaf records; the purging of the registration by the use of death reports, house to house investigations, cancellation for failure to vote within a two-year period, and other reliable information. The signature of the voter is required when he registers and also when he votes, thus making impersonation at the polls very difficult. The registration will be under the supervision of the county board of deputy supervisors of elections.

Michigan. The permanent registration act of Michigan will replace in 1932 the existing quadrennial system in cities of over 5,000 population. Cities and towns of less population may adopt the system. The old type of registration proved to be expensive, inconvenient to the voters, and not especially effective in preventing frauds. The records were cumbersome and obsolete, and a number of cities in the state had already adopted the use of a card system without statutory authority. Probably the greatest single defect in the old scheme was the failure to provide an efficient means of taking care of removals within the same city, which is very important in large cities.

The new registration law will not go into effect until 1932, for the reason that the current quadrennial registration will not expire until that time. One unusual feature of the law is the provision that the secretary of state shall instruct the city clerks concerning the necessary arrangements, procedure, and forms. He is directed to appoint an advisory board of three members, persons acquainted with election procedure in the state, to assist him in the preparation of such instructions. It is believed that by this provision the city clerks will be relieved of much of the work of planning to put the act into effect, and that more uniform and better administration will be secured than would be the case otherwise. It is assumed that the secretary of state will appoint outstanding election officials of different sized cities to be members of this board.

The new registration law provides for the usual loose-leaf or card records for registration, central registration at the office of the city clerk or election board throughout the year, transfers upon the signed request of the voter or upon reliable information, and thorough purging of the lists by use of death reports, transfers, cancellation for fail-

ure to vote within a two-year period (after notice and opportunity for reinstatement), and a house to house investigation when necessary. The signature of the voter is required when he registers, and also when he votes. This feature, which is becoming a standard part of permanent registration laws, provides one of the most effective means of preventing voting frauds. Some opposition to this provision was raised in the legislature, where it was feared that it would slow up the voting. Mr. Oakley E. Distin, chief supervisor of the Detroit election board, convinced the assembly committee, however, that the signature identification at the polls as provided by the bill (the voter signs a certificate and presents it to the election officials) would actually hasten voting, since under the present system the election officers, not knowing exactly how a name is spelled when it is announced to them by the voter, often waste time in trying to find it rather than ask the voter to spell it. With the signature of the voter before them, there should be little or no difficulty.

Indiana. At the present time, Indiana is one of three states which do not require the registration of voters in any part of the state. In the other two states, Arkansas and Texas, the precinct election officers use at the polls a list of persons who have paid the poll tax, which corresponds somewhat to a registration list. Indiana was one of the last states to secure a registration law, for it was not until 1911 that the legislature enacted a registration law which was upheld by the courts of the state.¹ For more than fifty years the need of a registration law was felt,² and the legislature passed several acts, only to have them held unconstitutional.³ The act of 1911 did not prove satisfactory, and the registration law of the state was changed by each succeeding legislature, until it was emasculated in 1921 by a provision for permanent registration, but a permanent system which was fundamentally defective in regard to records, procedure, and methods of purging.⁴ This law proved unsatisfactory, and, largely because of the stand of the rural members of the legislature, was repealed in 1927.⁵ At that time it was thought that the following legislature would take hold of the problem and pass a satisfactory registration law.

¹ *Session Laws*, 1911, p. 371.

² As early as 1861 Governor Lane urged the legislature to pass a registration law, pointing out the existence of election frauds. *House Journal*, 1861, p. 62.

³ *State v. Quinn*, 35 Indiana 485 (1869); *Morris v. Powell*, 125 Indiana 423 (1890); *Brewster v. McClelland*, 144 Indiana 423 (1895).

⁴ *Session Laws*, 1921, Ch. 273.

⁵ *Ibid.*, 1927, Ch. 195.

While the constitution of Indiana specifically requires the legislature to pass a registration act, it also requires election laws to apply uniformly throughout the state, thus necessitating the establishment of the same registration system for the largest cities that operates in the rural sections. This necessity has caused most of the trouble over a registration law. The rural members of the legislature could see no need of such a law in their districts and took the shortsighted view that election frauds in the larger cities did not concern them. In many states it has been the rural members of the legislature who have supported strict registration laws, particularly for the large cities, because election frauds in the cities often change the results of state elections.

Many citizens of the state were somewhat alarmed at the prospect of a primary and a hotly contested election in 1928 without the protection of a registration system. Some frauds were committed in the primary and the ensuing general election, but in the main they were avoided in the general election, principally by reason of the fact that each of the two political parties made a poll of the qualified voters in each precinct and used these lists at the polls to challenge persons whom they believed not to be qualified. While gross election frauds were thus prevented at this particular election, this procedure cannot permanently take the place of a registration system. In a particularly hotly contested election the parties can be relied upon to make such polls, but at other elections, especially at primaries, they cannot be relied upon to prepare such lists with any degree of thoroughness, and in many precincts the lists will not be made at all. The ease with which frauds can be perpetrated will soon become apparent, and gross frauds will become common unless precautions are taken.

Early in 1928 the Indiana State League of Women Voters decided to work for a sound permanent registration law, and the League has had a fight on its hands ever since. A special committee was formed to study the problem and to prepare a registration bill which would fit the needs of the state. This committee secured the assistance of Mr. Charles Kettleborough, of the Legislative Reference Library, and met in consultation with practical politicians of the state and with persons from outside the state. In August, 1928, a state institute on the subject was held, at which the tentative bill was explained and worked over by representatives from various parts of the state.

The bill as presented to the legislature provided for registration throughout the state, under the control of the auditor in each county. City and town clerks and assessors were made deputy registration

officers and were empowered to take registrations and to forward the records to the county auditor. The assessors were to conduct the original registration by registering voters in their homes when making the assessment for 1930. The records, methods of purging, transfers, and other details were similar to those provided for in the Michigan and Ohio acts. The system would have been convenient to the voter, since it would have been permanent, and local deputies were provided to take care of removals and new registrations. At the same time, it would have been effective in cities in preventing frauds, for, in addition to other safeguards, the county auditors were authorized to conduct a house to house investigation when necessary, for all, or for any part, of the county. This provision introduced the element of flexibility necessary to make the law suitable for cities as well as for rural sections.

After a bitter struggle, the registration bill was passed by both houses of the legislature and was presented to the governor during the closing days of the session. It was killed by a pocket veto. Governor Leslie is reported to have said that the registration system provided would have been an excellent thing for the large cities, but he disapproved the bill because of the expense and bother entailed for the rural sections. A more convenient and inexpensive system would be hard to devise. Similar registration laws are in operation, with entire satisfaction, for rural sections in Oregon, Montana, and Nevada. The prospects for adoption of a registration law in 1931 should be considerably better, for it is quite probable that by that time voting frauds will have taken place in various sections of the state and that the need for such a law will be more apparent.

Kentucky. Kentucky has a permanent registration law, applying to Louisville and the other cities of the state, passed in 1922. This system, however, is fundamentally defective in many respects. No practicable means is provided for keeping the registers purged of dead weight; the records are highly impracticable for a permanent system; and the voters are not identified at the polls. In 1925 serious voting frauds took place in Louisville, and the election was set aside by the courts.⁶ At the 1928 session of the legislature a permanent registration bill, based upon the National Municipal League report, passed the legislature almost unanimously, but was vetoed by the governor. Since that time the Louisville League of Women Voters, in coöperation with the

⁶ See David R. Castleman, "Louisville Election Frauds in Court and Out," *National Municipal Review*, December, 1927.

state league, has vigorously taken up the problem of securing a sound permanent registration law. At the suggestion of the Louisville League, the mayor of the city appointed a special commission to prepare a registration bill to be presented to the next legislature, which meets in 1930. This commission, consisting of the city and county attorneys and prominent representatives of the two political parties, has already prepared and published an admirable permanent registration bill providing ample safeguards against fraudulent voting. The measure will be presented to the legislature next year and stands a good chance of becoming law.

Other States. The Public Service Institute of Kansas City, Missouri, has led a movement for permanent registration at the last two legislative sessions in that state. The measure has been supported by the Kansas City Chamber of Commerce and by other civic organizations, but has been opposed by the political organizations and has twice suffered defeat. During the legislative session of this year the leading Kansas City papers gave very strong support to the bill, and the prospects for passage two years from now seem to be good. Kansas City at present has an obsolete quadrennial registration which is one of the most expensive systems in the country. A sound permanent registration would, it is estimated, save the city approximately half a million dollars every four years.

A second permanent registration bill to be presented to the California legislature was lost this year, though it was supported by the leading election officers of the state. No great change would be required in the registration system other than the adoption of adequate provisions for keeping the registers corrected from year to year. In most other respects the present registration system is well adapted to permanent use. The bill was opposed by the printers' lobby. A movement is now on foot, headed by the chief election officials of San Francisco and Los Angeles, to submit a permanent registration bill to a referendum vote at the next general election. Permanent registration is popular in the state, and it is believed that it will be adopted by a large majority.

A permanent registration bill, drafted by the Philadelphia Bureau of Municipal Research, was introduced in the legislature of Pennsylvania this year, but was lost. Similar bills have twice been defeated. The prospects for passage at the next session of the legislature appear, however, to be brighter.

A permanent registration act was again passed by the legislature of the state of Washington, but was again vetoed by the governor. The

act provided for a permanent registration of voters, under the control of the city clerk or comptroller for cities and the county auditor for outlying districts. Deputy officers were to be appointed for rural sections. Card records were prescribed, and thorough methods of purging, including cancellation for failure to vote within a two-year period, were provided by the act. Signature identification at the polls was also provided. One unusual feature of the act was that it stipulated that the secretary of state should receive a third copy of each registration record and maintain an alphabetical list of voters, to be used in mailing to the voters the official publications concerning constitutional amendments and initiative and referendum proposals. The governor vetoed the bill on the ground that this would require an additional bureau at the state capital and increase the cost of government. The practice followed in California of having the county election offices mail out such publications is probably better. The Washington registration act did not provide any means whereby the voter who changed his residence might transfer his registration.⁷

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The Legislative Session of 1929 in New York State. The one hundred and fifty-second annual session of the New York legislature was the first in more than twenty-five years in which Alfred E. Smith was not a factor, and in many of these years the most important factor. Governor Franklin D. Roosevelt had his first test, after being returned a victor by a majority of 25,000. The session brought to a crisis the executive budget issue, and the power of the governor to itemize appropriations is now before the state courts for decision. Many important and forward-looking measures were passed, particularly in the field of taxation.

During the session, 3,417 bills were introduced—1,594 in the Senate and 1,823 in the Assembly. Of these, 953 were passed and 713 were signed by the governor. The number vetoed was therefore 240, or twenty-five per cent of the total number passed. From 1916 to 1929, governors of New York have vetoed, all told, nineteen per cent of the

⁷ A bill was introduced this year in the New York legislature to create a special commission to study permanent registration, but the secretary of state reports that it did not pass. A similar measure in Illinois, creating a special commission to study election administration, became law on July 1.

¹ Governor Smith was not a state officer in 1916-18 and 1920-22.

bills passed. Not since 1921, the second year of Governor Miller, the last Republican governor in the state, has a governor vetoed so large a percentage of the bills passed, although Governor Smith equalled this percentage in 1919. New York governors show a high average of vetoes, and the political makeup of the legislature apparently makes little difference in the exercise of the veto power. The bicameral legislature is not effective, in that one house fails to check the other and few alterations of bills presented are made in the second house. The governor is most effective as a check, and the thirty-day period after the legislature adjourns gives him plenty of opportunity to study bills. Unless bills are signed during this period, they are automatically vetoed.

One of the great complaints heard today is that the state legislature clutters up the statute books with needless laws, and that too many are passed. When the product of this year's legislature is analyzed carefully, the total number of laws passed may be reduced materially by eliminating certain types. Of the 713 laws passed, 112 were special laws for cities. Under the home rule amendment, special laws for cities may not be passed except upon a message from the governor declaring that an emergency exists, and by concurrent action of two-thirds of the members of the two houses. If these conditions are not met, a referendum must be held in the city concerned. It is customary for the governor to require that the mayor of the city concerned write or wire a request for the proposed law. Mayors consider the use of this emergency clause much simpler and less expensive than the referendum. Extensive use of this provision may defeat the purpose of home rule, particularly if it is applied to matters of transcending importance. This was hardly the case with the 112 special laws passed at the recent session. One law applied to cities of the second class, three made changes in the home rule law, seven in the general city law, thirteen in the village law, ten in the county law, eighty-three were special laws for villages and counties, and sixty applied to New York City. Forty-nine of the measures were for claims against the state, and thirty-one were for private associations. Fifty-two special appropriation bills were passed, in addition to the two budgets submitted by the governor. Thus, 423 of the 713 bills passed were of a special nature or for appropriations, and only 290 were added to the general laws of the state. This in large part explodes the general notion that many laws are added to the statutes of the state each year.

As has been the case since 1913, the legislature was safely under the control of the Republican party.² The voters of the state have apparently adopted the policy of electing a Democratic governor and a legislature safely Republican. As a result, certain recommendations of Governor Roosevelt met with defeat.

In a special message of March 12, the governor proposed, first, that the power sites on the St. Lawrence should remain forever the property of the people of the state, and that the plant be built, financed, and operated by a board of five trustees to be named by the governor with the approval of the Senate; second, that power developed at the St. Lawrence power site by the state should be transmitted and distributed "if possible" by private corporations at the lowest practicable rate, and that rates should be fixed "by contract." The names of ex-Governors Hughes and Smith were mentioned as the type of men wanted on the board of trustees. The two parties have differed on water power policy, and since this plan included public development, it was not acceptable to the Republican leaders. One legislator characterized the plan as "Al Smith's little boy dressed up in a new suit of clothes."

The four-year-term-for-governor referendum also failed. The constitutional amendment which provided for a four-year term, with the governor elected in presidential years, was defeated by the electorate in 1927, largely as a result of Governor Smith's energetic state-wide campaign against it. Mr. Smith was in favor of the four-year term, but he favored election of the governor in the even years between presidential elections. Governor Roosevelt proposed that the legislature submit two questions: first, whether the term of office of the governor should be increased to four years, and second, whether the election should occur in non-presidential years.³ The legislature refused to act.

A fifty-million-dollar bond issue for state hospitals failed, and the labor legislation program, which included a straight forty-eight-hour week for women and children and the requirement of hearings before the issue of injunctions in labor disputes, was defeated. The state enforcement code, known as the Mullan-Gage law, was repealed in 1924, and each year attempts have been made to reenact it. At this session an enforcement code was debated very vigorously, but it failed in the Assembly.

² The Senate was Democratic in 1923-24.

³ Special message, March 20, 1929.

The most important difference of opinion between the governor and the legislature arose over the budget. Under the reorganized state government, an executive budget was created (by constitutional amendment), and this session of the legislature was its first test. When the budget was submitted it contained lump sum appropriations totaling about \$54,000,000. Included in this amount were the appropriations for the departments of law and labor. These were submitted in this form at the request of the heads of the two departments, inasmuch as internal reorganization was under way. The governor proposed to itemize these appropriations before the beginning of the fiscal year on July 1. The legislature passed the budget, but added a provision that "the appropriation hereby made . . . shall be expended in accordance with a schedule to be approved by the governor, the chairman of the Senate finance committee, and the chairman of the Assembly ways and means committee under the finance law of 1921." Those parts of the budget were vetoed by the governor, who submitted a supplementary budget on March 18.

When this arrived, the speaker was not clear as to the proper action. Unless the Assembly consented to receive it, it could not be introduced. Here was a situation without precedents, and the speaker entertained a motion that the supplementary budget bill should be sent to the ways and means committee for its information and consideration. Three plans were submitted with the budget. Form A itemized the requests as far as practicable at that time. Form B was in the same manner as the original budget; and a third suggestion was made that the heads of departments should make the itemization. The legislature refused all three proposals and passed the supplementary budget with about \$20,000,000 of lump sum appropriations subject to joint control. In an opinion, the attorney-general confirmed the power of the legislative chairman to exercise joint control with the governor. At one time, it appeared that the governor would veto the entire supplementary budget and call a special session of the legislature. But in the end he vetoed a large part of the lump sum appropriations, and accepted other portions. In his veto of salary items for the department of law, he laid the basis for a court determination of the powers under discussion.

The legislature passed a gasoline tax of two cents a gallon. This levy became effective May 1, will be permanent, and will yield about \$22,000,000 a year. Twenty per cent of the amount collected will be returned to the counties, on the basis of highway mileage, and five per cent will be given to New York City. It is from the proceeds of this tax

that the farm relief program will be put into effect. The counties will be freed from paying about \$9,000,000 now expended for state and county roads. A second important change in the fiscal policy of the state was the elimination of the state direct property tax levy, although property taxes will still be collected by local government units. This amounted to a tax reduction on general property of about \$13,500,000. The income tax was reduced, although the governor's recommendation of a twenty per cent reduction was altered by the legislature. The law as passed provided for an increase of exemptions. The state tax commission objected to this type of reduction on the ground that it narrowed the tax base and placed the state exemptions out of line with the federal income tax law, thus creating confusion in the filing of returns.

The program of increased aid for local school districts was extended. Between 1918 and 1928, state aid for education increased from \$17,000,000 to \$86,000,000, and the 1929 legislature provided for \$6,000,000 additional. This is to be used for the one, two, and three-teacher schools.

Under earlier legislation, the cost of removing grade crossings was to be borne, fifty per cent by the railroad, forty per cent by the state, and ten per cent by the county. Counties are now largely relieved of their portion of the burden by a law which increases the share of the state to forty-nine per cent and decreases the county quota to one per cent.

The reforestation policy of the state was expanded by an appropriation of \$120,000 to purchase non-agricultural lands. The conservation department may purchase lands outside of the forest preserves, and counties may acquire tracts of less than 500 acres. In the latter case, the state will pay half the cost, up to \$3,000 for a single county. Large areas of land in the state have been abandoned and are rapidly becoming jungles. Up to this year, the conservation department had no power to acquire land outside the forest preserves.

A bureau of state publicity was created for the purpose of collecting and compiling information as to agricultural, horticultural, industrial, commercial, social, educational, and recreational advantages of the state; also historical and scenic points of interest, and transportation and highway facilities. New York joins an increasing number of states which have recognized the value of advertising.

The legislature had before it a "compulsory liability insurance law" for car owners, but this failed to pass, and a "safety responsibility law" was enacted. This measure extends the driver's license law by deny-

ing the use of the highways to persons who have failed to pay a judgment against them until they give security for the future. This type of act has spread rapidly because of the difficulties encountered in Massachusetts with the compulsory liability insurance law.

Aviation secured attention in the authorization of counties to establish air ports and of two villages or two cities to establish an air port. A special commission was continued to study the needs of aviation and its development and to initiate a state system of weather observation.

Important alterations in the election law of the state will make it easier to register and vote. A 1928 law provided that voters in cities and villages of over 5,000, where central registration is required, may register any day from July 1 to September 10. Under an amendment, the beginning date for central registration was set back to June 1. A new law provides that an application for an absentee ballot may be made at the time of registration or at any time during the registration period. Another important change in the election law empowers state committees to make their own rules as to the number of members and unit of representation to be employed in the make-up of such committees.

The most signal change in the law of the state was made by the Fearon Decedent Estates Act, which materially altered the substantive law of estates in effect since 1830. At the date mentioned, a large proportion of the wealth of the state was in real property. Today the great bulk of wealth is in the form of personal property. The new law meets this changed situation and makes distribution of property more just and equitable. The measure goes into effect September 1, 1930, and is not retroactive as to wills executed, or as to dower rights in any property acquired by a husband, prior to that date. All distinctions between real and personal property as assets in an estate are wiped out; also all distinctions between the sexes, and between a surviving husband and a surviving wife. Another new law regarded as most significant to women allows a married woman to establish a domicile for holding office or voting, other than that of her husband.

A number of investigative bodies were created or extended, although the life of the Committee on Taxation and Retrenchment was terminated. This body had functioned for many years, and its studies were among the most searching in the field of state government. The Baumes Crime Commission was extended to March 1, 1930. A study of the Public Service Commission and the powers exercised by similar commissions in other states was authorized; an aviation weather ob-

servation service will be studied, as well as the development of the mineral springs at Saratoga. In the field of welfare legislation, a commission will determine the best methods of eliminating old-age want. As the number of new or continued commissions indicates, the legislature has definitely adopted a policy of investigation before action. As evidenced by the character of the laws passed, the results of this method of procedure have thus far been decidedly salutary.

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Amending a State Constitution by Custom. The constitution of Arkansas, adopted in 1874, provided that proposed amendments must be approved by "a majority of the electors voting at such election" (the general election) before being declared adopted. In 1883 the legislature passed a law directing the speaker of the house to pass upon the election and declare the result.

In 1893 an amendment was submitted empowering the governor to fill vacancies "in any state, district, county, or township office." It received a majority of the votes cast on it, but not a majority of the total vote. Nevertheless, the speaker declared it adopted. The question whether or not the amendment had really been adopted came before the supreme court, and the court decided, three to two, that it was not valid, since it had not received a majority of the total vote.¹

Thirteen years had passed between the submission of the amendment and its voidance by the supreme court. Naturally the governor had been active under the authority of the supposed amendment and had filled numerous vacancies. Even after the decision of the supreme court was announced, the practice of filling vacancies by appointment was continued, though occasionally special elections were called. Whether membership in the legislature was regarded as an "office" is not clear, but most governors seem to have considered that they had the right to fill such vacancies by appointment.

Concerning this matter the constitution (Art. v., Sec. 6) reads: "the governor shall issue writs of election, to fill such vacancies as shall occur in either house of the general assembly." A law, originally passed in 1836 and incorporated in Crawford and Moses' *Digest* (1921), Secs. 4962-5, regulates the details of resignation from, and filling vacancies in, the legislature. It requires that the governor shall, "without delay,

¹ Rice v. Palmer, 78 Arkansas 432 (1906).

issue a writ of election to fill such vacancy" and directs how it shall be done. Whether any governor ever filled such vacancies by appointment previous to 1893, when the amendment authorizing the executive to fill vacancies in "office" was submitted and declared adopted, the writer cannot say. If membership in the legislature was considered an "office," it was only natural that the governors should fill such vacancies by appointment from 1893 to 1906, when the supreme court declared that the proposed amendment had never been adopted. But the practice of filling such vacancies has continued, with few interruptions, to this day. One governor, C. H. Brough, even filled vacancies in a state constitutional convention in the same way.

When the attention of Governor McRae (1922) was called to the provisions of the original constitution regarding calling special elections, he admitted that he had no right to appoint members of the legislature and announced that he would appoint no more. But the practice of appointment was revived by his successors. When Governor Parnell (1928) was reminded of the constitutional provision, he acknowledged that it was against the practice, but said that "former governors of Arkansas established a custom which now appears to have the force of the common law."

A member of the supreme court who swore in one of these appointees said that he did not consider it his "duty to raise the question of the authority of the governor to make the appointment by refusing to swear the appointee in." He would express no opinion as to the power of the governor in the matter, since the question might come before him in the form of a case, but he admitted that "custom could not change a constitutional provision."

When the situation was called to the attention of the auditor, who approves vouchers for salaries, he referred the question to the attorney-general. In reply, that officer said that the senate was the judge of the qualifications and election of its own members, and that there was nothing left for the auditor to do but approve the voucher of every one whom the senate accepted as a member.

It may be that custom cannot "change a constitutional provision" so far as to put the new form in writing, but it has changed it in practice in Arkansas. Appointment is cheaper than holding a special election; and where all of the one hundred and thirty-five members of the legislature save one are of the same party, perhaps it makes no great difference.

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NOTES ON ADMINISTRATION

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The British Civil Service and the Trade Unions Act of 1927. At the election of 1924, only two civil servants, in the persons of two Post Office trade union officials, were elected to the British House of Commons. In 1927 Mr. Baldwin's government passed a Trade Disputes and Trade Unions Act forbidding political objects to civil service associations. At the election of 1929, no fewer than seven civil service trade union officials were elected to Parliament, all being supporters of a party pledged to reverse the policy of the Trade Union Act of 1927. The student of political institutions may well examine this sequence of events for the clue it contains to certain rather puzzling aspects of British public life.

Mr. Baldwin's Trade Union Act, in so far as it concerns the civil service, confines civil servants to membership in staff associations consisting of servants of the crown—associations, furthermore, which are without political objects and which are not in affiliation with trade unions of other than crown employees. It provides that the regulations as to the conditions of service in His Majesty's civil establishments shall prohibit civil servants from belonging to organizations infringing the act. In practice, the regulations which have been issued under the act forbid an established civil servant to belong to any organization whose objects are to influence the remuneration and conditions of employment of its members, unless a certificate of approval has been granted to the association. It will be noticed, incidentally, that while the relative clause in the act is negative, the regulations are positive. They establish an active control over staff associations, and thus set up a new principle as regards the organizations of British civil servants.

The provisions of Clause v (which alone relates to the civil service) were designed (1) to cut off civil service organizations from association with the general body of trade unions, and from relationship with political organizations. The Labor party was not specifically mentioned; but in fact it is the party concerned, for it is the only one to which affiliations had been made, and, furthermore, it is the only one which is so constructed that such affiliations would be pos-

sible. Thus the intention was to divide civil servants from the rest of organized labor, with the particular aim of removing all danger that in any such event as the general strike of 1926 government employees might be called out on strike.

The clause under consideration was designed also to prevent direct representation of civil service interests in the House of Commons. Such representation had been obtained by securing the nomination of full-time employees of the Union of Postal Workers and the Civil Service Clerical Association as candidates of the Labor party, and their election for some constituency in the country.

It was a further object to prevent a rapprochement with the civil servants of other countries. This rapprochement had first begun with the Postal International. In this organization British postal officials came in contact with postal servants from almost every European country except Russia, from the United States, and from the British dominions overseas. International relationships had been extended through the adherence, in 1925, of the Civil Service Confederation to the International Federation of Civil Servants and Teachers. This latter extension, in particular, had apparently caused some alarm in the British Treasury and among the responsible authorities in a number of European countries.

The legislation had perhaps a more remote and less well defined aim. It may have been hoped that it would help to make civil servants a class apart, not only from organized labor, but also from the rest of the community.

These were the objects, more or less clearly realized, of Clause v of the Trade Union Act of 1927. When the act came to be applied, it was found that it prevented not only affiliation with the organized Labor movement, but also association with certain other bodies. For example, the Civil Service Confederation had to sever its connection with the National Federation of Professional, Technical, Administrative, and Supervisory Workers, a body not connected with the Labor party nor affiliated to the Trades Union Congress, though some of its constituents are affiliated to one or both. It is a federation which includes such diverse elements as the Railway Clerks' Association, the Association of Architects, Surveyors, and Technical Assistants, the Association of Women Clerks and Secretaries, the Electrical Power Engineers' Association, the National Union of Drug and Chemical Workers, and the National Union of Commercial Travellers. It comprises a whole congeries of middle-class salaried workers, partly

technical, partly executive, partly supervisory, with traditional prejudices against trade unionism, and too modern and not sufficiently specialized to have achieved the solid organization of medicine and the law.

A number of women civil servants' organizations found themselves barred from contact with the non-party women's organizations engaged in the equality campaign; and the Chief Registrar of Friendly Societies, who is charged with the administration of the act, actually ruled that the participation of civil service associations in a meeting to advocate the extension of the franchise would be illegal.

The bill was received very quietly in the civil service. Executives protested, the editors of service papers denounced it in leaders, association secretaries fulminated in speeches; but it aroused no violent resentment among the general body of civil servants, or even of association members. The staff side of the national Whitley Council judged it unwise to attempt to organize a mass demonstration in the Albert Hall on this issue. The threat to increase the hours of a proportion of civil servants by an hour a day had packed that hall with protesters, just as it was packed at a later date in the course of the cost of living agitation, and as it would be again at any threat to wages or conditions of work. But no amount of whipping would have even half-filled the hall on this issue. The campaign in the civil service against Clause v apparently fell quite flat. As a matter of fact, certain elements in the service actually welcomed the clause's provisions, or were not violently averse to them. The First Division Clerks' Association, the Association of Inspectors of Taxes, and the Society of Civil Servants, loosely bound together in the Joint Consultative Committee, were among the former, while the powerful Customs and Excise Federation and the Executive Officers' Association were among those whose own policy had been anti-political and whose opposition to the act was partly on principle and partly assumed in order to maintain staff unity. In certain unions on the industrial side of the service, such as the Post Office Engineering Union (at that time Trade Union No. 1635), a few branches certainly urged resistance. But even here the general sentiment of the membership was not merely in favor of implicit respect being shown to the new law, but strongly against anything being done that could be construed as departing remotely from the spirit of the act.

The civil service associations set to work to secure approval. The Civil Service Confederation, for example, set up a special com-

mittee to discuss difficulties with the Chief Registrar of Friendly Societies, and to advise its many constituent associations as to any amendments necessary in their rules and constitutions; and the big Post Office unions set up their own sub-committees. In the case of the Union of Post Office Workers, the Post Office Engineering Union, and the Civil Service Clerical Association, all of which had been affiliated to the Labor party, substantial changes in principle had to be made. The executive of the Post Office Engineering Union had no power to alter the rules, and this necessitated a special conference at a cost of some £900; all the other executives made the necessary alterations and sought subsequent confirmation at the next annual conference of their respective associations. In the great majority of cases only trifling verbal amendments were required.

There has, in fact, been no case either of failure to apply for approval or of refusal of the application. A spectacle of sweet reasonableness was displayed as between the civil servants who administered the act and those who came under its operation. An illuminating example of this accommodating spirit was seen in the case of the Whitehall branches of the Workers' Union. These branches are made up of poorly paid employees like cleaners and other non-established men and women. The union to which they belong is indubitably one with which association was forbidden under the act. The Whitehall branches had, however, lived a life of their own somewhat apart from the main body of their union, and the difficulty was overcome by an addition of a new clause to the union rule dealing with branches. This clause restricts the membership of the Whitehall branches to employees of the crown, and lays down that they are not to be subject to the control of the executive committee on matters affecting wages and conditions. The practical effect of this is that the executive committee cannot call the civil service membership on strike. The Treasury and the Registrar have thus given the Workers' Union a special position under the act; for no certificate of approval is to be issued, its place being taken by an official letter confirming the arrangement.

Not only were civil servants as a whole apparently taken up with the business of working the act, but a number of associations held the view that even to protest against it was to take political action and to infringe the act. Thus, though formal resolutions condemning it were passed by executives and annual conferences in a number of cases, the act seemed to have been met with apathy and acquiescence. Similar phenomena were witnessed in a smaller degree among trade

unionists at large, and the Labor party campaign of public meetings against the bill was generally felt to have been a failure. The government might well have been pardoned if it supposed that it had interpreted aright the sentiment of the civil service and of the community.

But though the service accepted the accomplished fact and complied with the law, and though there was no wild outburst of vocal indignation, there was much quiet resentment, especially among the members of the big Post Office organizations and of the Civil Service Clerical Association, and among the membership of the Civil Service Confederation. The members of the Federation of Women Civil Servants, moreover, were particularly indignant, for they had prided themselves on being non-political and regarded their membership in women's suffrage and equal citizenship societies as being association with a sacred cause. Organizations already committed to parliamentary candidatures made arrangements to secure their continuance. The Civil Service Clerical Association unofficially fostered a private *ad hoc* committee which invited subscriptions for the election campaign fund of its secretary; and now that he is elected, the association will arrange his work so that he can attend Parliament. The Union of Post Office Workers had, at the time of the passing of the act, a considerable election fund. This they vested in a body of trustees composed of the six officials who were candidates for Parliament. It was calculated that the fund was sufficient to defray the expenses of the next election; and this was the object of the trust, which would thus fulfill itself and automatically come to an end. The union expects that the Labor government will remove the prohibition of a parliamentary election fund.

The Civil Service Confederation was concerned at the interruption of its membership in the Civil Service International, not so much because of any loss to the British civil service, as because it was the largest contributor to the funds of the International, to whose stability its defection was a serious blow. The financial loss to the International was minimized by a heavy subscription paid in respect of a quarterly publication, a payment which was not prohibited by the act. Though the Confederation was prevented from sending delegates, the man who had been the principal British delegate on previous occasions attended at the last two yearly International conferences; and although attending in a private capacity, he was present at all meetings and by invitation spoke on several occasions. He probably exerted an even greater influence than when a delegate duly accredited.

These corporate arrangements for defeating the intention of the act were, moreover, actively supplemented by the private efforts of individuals. In the course of debate in the House of Commons, Mr. Winston Churchill had repudiated the charge of interference with the liberty of civil servants, and had declared that as private individuals, they were politically free. The statement was brought prominently to the notice of the service, and many men who had hitherto supposed that they were barred from participation in politics took advantage of it. Members of the Post Office and the clerical grades were advised by their leaders to join local Labor parties. There is evidence that very many of them did so, and the local organizations upon which the Labor party is built up were thus greatly strengthened by the accession of a number of men and women trained in exact methods of business in big organizations. This accession of active workers, moreover, intensified the general trade unionist opposition to the Trade Union Act.

The severance of women civil servants from the powerful feminist movement brought the effect of the act prominently to the notice of a peculiarly sensitive body of voters, many of whom were but newly enfranchised. As in the case of the Labor party, so in the case of the women, individuals were stirred up to participate as persons in organizations to which they had previously adhered passively through mere affiliation. Their hostility to the government on this single issue not unnaturally had its effect upon their fellow members.

Nor must the influence of the National Federation of Professional Workers be ignored. This organization undoubtedly suffered far more than the Civil Service Confederation itself from the resignation of the latter. The adherence of this strong civil service organization had been a gesture of good-will toward a struggling movement. The loss of 60,000 members and their fees shook the Federation, and the efficiency of its organization was maintained only by serious sacrifices on the part of its officials. The influence of these widely spread middle-class voters tended thus to be directed against the government.

The influences analyzed above are obviously not adequate to account for the verdict of the election. An important factor must be considered. As regards British politics, it must always be borne in mind that a great number of voters are trade unionists first and politicians a long way second. To them their trade unions stand in place of a public school or university, or of personal advancement. These form the body of earnest hard-working family men who do their

jobs and go quietly home without inclination to attend either branch meetings or public demonstrations. Many of these men do not bother to vote on ordinary issues. But let an attack on the unions be made by a government, and they register mentally a determination to vote against the offenders, and in due course they carry it out. This fact explains two seemingly conflicting phenomena, i.e., the failure of the Labor party campaign at the time of the passing of the act and the subsequent defeat of Mr. Baldwin. There is apparently an instinct in Englishmen to form unions in connection with their work, surviving from generations of craft guilds, which may perhaps be compared with the Americans' instinct to form clubs; so that in England trade unions are accepted very generally as integral parts of the social structure. In their *History of Trade Unionism* the Webbs remarked on the fate of governments which offend the trade union sentiment of the country, in connection with the Liberal defeat in the election of 1874.

The failure of Mr. Baldwin is plain, and the verdict on his policy as regards Clause v of the Trade Disputes and Trade Unions Act seems conclusive. The probable procedure of the present government is not so plain. Mr. Snowden, who, as Chancellor of the Exchequer, is the minister primarily responsible for the civil service, is not personally very sympathetic toward political aspirations on the part of civil servants. At an interview during his previous term of office at which the writer was present, he told a deputation of civil servants that he was in favor of the Treasury regulation prohibiting the participation of responsible officials of the crown in politics, and that he was definitely against an alteration which would allow civil servants to stand for Parliament without resigning. Mr. Snowden's instincts and preferences are probably in line with the Treasury view that civil servants should be absorbed in administration and should stand apart from party politics. This is also the view of an influential section of executive and administrative officials, and must be offset against the determination of the great masses of lower-grade civil servants to press for repeal of Clause v. There are, furthermore, powerful groups, such as the Association of Executive Officers, the Customs and Excise Federation, and the Tax Clerks' Association, which think that, as a matter of internal policy, political affiliations are unwise. They hold, however, that the prohibition established by the act is both unwarrantable and impolitic. This view is likely to spread as a result of the disappointments to the civil service inevitable during a period of Labor government.

The commitments of the government to its trade union supporters are, of course, very heavy, and it is doubtful whether failure to propose virtually repealing the act would be tolerated. Any bill of the sort would certainly repeal Clause v. No apathy toward civil servants on the part of the trade unions can be expected. They are, indeed, vitally interested, because any future process of nationalization will turn their members wholesale into servants of the crown. The Labor party itself, with its policy of successive nationalizations, is well aware that problems arising from the position of public employees cannot be dealt with in the restrictive manner of the act of 1927. Unless, then, something untoward befalls Mr. MacDonald's government in the near future, it seems certain that the policy toward civil service associations contained in the act of 1927 will be reversed in 1929 or 1930. This will be followed by spectacular re-affiliations to the Labor party and the Trades Union Congress. But it is unlikely to result in any fresh affiliations. Indeed, as has been suggested, the removal of restrictions on civil servants may eventually result in a reaction against political commitments, though not in any reduction of the political activities of the service organizations.

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NOTES ON JUDICIAL ORGANIZATION AND PROCEDURE

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The Activities and Results of Crime Surveys. This article aims to describe the activities and ascertain the legislative results of approximately twenty crime surveys in American cities and states during the last ten years. To a lesser extent, attention is devoted to concrete changes in administrative practice accomplished for the most part without legislative aid. Owing to the great diversity in the nature of the activities of these various agencies, it may be desirable to classify them in some manner, however arbitrary. From the standpoint of research pursued by qualified experts, the Cleveland Crime Survey, the Missouri Crime Survey, the work of the Illinois Association for Criminal Justice, and the publications of the New York Crime Commission are in a class by themselves. If immediate legislative results are to be the criterion, honors must again go to New York, adding California, Michigan, Ohio, and to a lesser extent Louisiana, Minnesota, Indiana, Pennsylvania, and Rhode Island. In Missouri, Tennessee, and Connecticut no legislative enactments seem to have resulted. The Cleveland Association for Criminal Justice, the Baltimore Criminal Justice Commission, and the Chicago Crime Commission are voluntary associations in constant touch with the crime situation. The Ohio and Indiana movements were fostered by state bar associations. Public commissions authorized by law made the preliminary investigations in New York, Michigan, California, Louisiana, Pennsylvania, and Rhode Island. Voluntary associations organized for the purpose and financed from private funds were responsible for the work in Illinois and Missouri. The American Institute of Criminal Law and Criminology fostered the Connecticut and Memphis studies and gave valuable aid in Illinois. The Cleveland Crime Survey was conducted under the auspices of the Cleveland Foundation.

No evaluation of the effect of resulting enactments or administrative changes on the general crime situation is attempted. The aim is merely to set forth the motivating forces and circumstances of each of the several movements, followed by brief summaries of the immediate

achievements in each separate jurisdiction. It is hoped that a future study, upon which the writer is now working, will be able to detect and segregate common threads of action and achievement running through all of these surveys and present some sort of judgment regarding their efficacy and successful achievement to date.

I. OUTSTANDING RESEARCH SURVEYS

Inasmuch as the crime situation can undoubtedly best be dealt with through scientifically acquired information resulting in scientifically applied conclusions, it has been deemed fitting to begin this study with a consideration of those surveys which have constituted or produced outstanding pieces of research. In this category are included the Crime Survey of the Cleveland Foundation, the Illinois Crime Survey, the Missouri Crime Survey, and the publications of the New York State Crime Commission.

Cleveland. The Cleveland Foundation Survey of Criminal Justice, published in 1921, contained thoroughgoing and monumental researches by such nation-wide authorities as Dean Roscoe Pound, Professor Felix Frankfurter, and Mr. Raymond Fosdick. On January 1, 1922, the Cleveland Association for Criminal Justice was established "by civic organizations, in the belief that an agency was needed in the community in addition to those public agencies established by law as an integral part of our political government, to make instantly and constantly articulate the principle of public vigilance through the courts in the matter of social self-defense against crime."¹ No immediate enactment of a reformed criminal code resulted. Nevertheless, the Association has been active in centering public opinion on such deficiencies in criminal administration as its constant vigilance has discerned. The result has been a material improvement in various phases of the work. It is not our purpose to attribute any specific reform to either the Cleveland Crime Survey or the Cleveland Association for Criminal Justice. Both have undoubtedly had some influence.

New and advanced means of arranging and preserving crime statistics in the police department of Cleveland were inaugurated during 1926 under a supervisor of records with the rank of lieutenant.² During 1925 a bureau of criminal investigation to aid in the preparation of

¹ *First Quarterly Bulletin*, 1927, The Cleveland Association for Criminal Justice, p. 3.

² *Ibid.*, p. 45; *Cleveland Crime Survey*, Part 3, pp. 79-80.

cases was established in the police department.³ On June 1, 1923, the clerk of the municipal court "introduced an index of state and city cases designed to record each criminal case and indicate at a glance its status or disposition. This system saves both time and effort in tracing cases through this court."⁴ Through order of the chief justice of the common pleas court, the administration of bail bonds was considerably tightened in 1926.⁵

Probably the most important reform was that accomplished under the act of the Ohio legislature of 1924 which permitted the common pleas court in counties where there are two or more judges to elect a chief justice whose duty it is to unify the work of the court. This reform was recommended by the Cleveland Crime Survey⁶ and was soon adopted by the court of Cuyahoga county, in which Cleveland is located. This court, under the guidance of Chief Justice Homer G. Powell, has been proclaimed by the *Journal of the American Judicature Society* "the best court of general jurisdiction in the country."⁷ The court has established a probation department with qualified officers.⁸ In 1924 there was established in the court of common pleas a psychiatric clinic to assist judges in sentencing persons convicted of crime.⁹ During 1922 and 1923 the Association's court observers presented to judges of the court of common pleas a report of the criminal record of the defendant in each case before the court. This led the court to establish its own criminal record department in 1924.¹⁰ The recent enactment of the new Ohio criminal code is treated elsewhere in the present article.

Illinois. The formation of the Illinois Association for Criminal Justice in 1926 was the result of a movement initiated by the Illinois State Bar Association, with the collaboration of various voluntary organiza-

³ *First Quarterly Bulletin*, 1927, The Cleveland Association for Criminal Justice, p. 6; *Cleveland Crime Survey*, Part 2, pp. 122-124.

⁴ *First Quarterly Bulletin*, 1927, The Cleveland Association for Criminal Justice, p. 6; *Cleveland Crime Survey*, Part 1, pp. 64-67.

⁵ *First Quarterly Bulletin*, 1927, The Cleveland Association for Criminal Justice, p. 6; *Cleveland Crime Survey*, Part 1, p. 85.

⁶ *Cleveland Crime Survey*, Part 1, pp. 71-82.

⁷ *Journal of the American Judicature Society*, Vol. 12, No. 1, June, 1928, p. 12.

⁸ *First Quarterly Bulletin*, 1927, The Cleveland Association for Criminal Justice, p. 8; *Cleveland Crime Survey*, Part 4, pp. 46-47.

⁹ *First Quarterly Bulletin*, 1927, The Cleveland Association for Criminal Justice, p. 8; *Cleveland Crime Survey*, Part 5, p. 41.

¹⁰ *First Quarterly Bulletin*, 1927, The Cleveland Association for Criminal Justice, p. 8.

tions of a civic and industrial nature. The Industrial Club of Chicago furnished \$100,000 for the purpose of conducting a crime survey which was duly completed and published in July, 1929, in the form of a 1,108-page volume entitled *The Illinois Crime Survey*. The report was edited by Dean John H. Wigmore, and the investigation was directed by Arthur V. Lashly, who held a similar position with the Missouri survey; in fact, most of the experts who collaborated in the Missouri survey had an important part in preparing the Illinois volume. The result was a series of painstaking and scientific researches that have covered from every angle the crime situation in a number of rural counties in Illinois as well as in Chicago. While matters of legal procedure and judicial administration are adequately dealt with, Part III of the study enters into an extensive treatment of the socio-political aspects of organized crime in Chicago. There is no question that it is the most thorough work of its kind yet published. The reputation for sound scholarship associated with such names as Wigmore, Bruce, Gehlke, Moley, Burgess, etc., should make it a prolific source-book for students, scholars, administrators, and legislators for many years to come.¹¹

While the Association did not go before the 1929 session of the legislature with a complete legislative program, it did work indirectly through various committees for the enactment of certain measures. A bill providing for an increase of the state police force was passed and signed by the governor. Bills providing for a state bureau of criminal identification and for prosecution by information were defeated. A bill permitting waiver of trial by jury and the optional choice of trial by judge was vetoed by the governor. The failure to secure prosecution by information and jury waiver was at least partly due to a serious question of constitutionality.¹²

Missouri. The Missouri Crime Survey is so well known that a reference to its many outstanding qualities is almost trite. Originating with the St. Louis Bar Association in 1923, under the leadership of Mr. Guy A. Thompson, the idea of a crime survey took form the following year with the formation of the Missouri Association for Criminal Justice, a voluntary organization supported by funds from private sources.

¹¹ A summary of the Illinois Crime Survey, by Judge Andrew A. Bruce, composes Part II of the *Journal of the American Institute of Criminal Law and Criminology*, February, 1929.

¹² Letters from Mr. W. C. Jamison, assistant director of survey, dated July 16 and July 22, 1929.

As much as \$65,000 was spent, largely as fees to experts trained in the social sciences as well as in the legal profession, and a monumental piece of research was produced. The product—published in 1926 by the Macmillan Company under the name of *The Missouri Crime Survey*—formed a book of almost six hundred large pages. Mr. Justin Miller said of it: "Up to the present time (1927), that is the best thing that has been published in this field."¹³ The recommendations of the Missouri Crime Survey have not been enacted into law in Missouri—not even in a minor way. The inquiry, was not wasted effort, however. The findings were used extensively in many states which revised their criminal codes without intensive surveys. Moreover, they have supplied to publicists, scholars, and teachers invaluable information which cannot fail to contribute to the general ferment which is working toward a solution of the criminal procedure problem.¹⁴

New York. A joint legislative committee, under the chairmanship of Caleb H. Baumes, appointed in 1926, became the New York Crime Commission in 1927 and has functioned as such, with continuing appropriations, ever since, having reported to four different sessions of the legislature. The commission has issued the most thorough studies of crime of any official commission to date. We must here be content with a mere summary of what seem to the writer to be the most important enactments resulting from its recommendations. The celebrated habitual criminal statute provides for heavier penalties for second and third felony convictions and life imprisonment for fourth conviction.¹⁵ Another statute imposes heavier penalties upon those committing felonies while armed.¹⁶ A later enactment makes it a felony knowingly to receive stolen goods, or to receive any goods without making a reasonable inquiry into their ownership¹⁷—obviously aimed at the "fence."

Another category of enactments modifies trial procedure. Those jointly indicted may be jointly tried.¹⁸ If the defendant offers evidence of his character, the prosecution may introduce in rebuttal proof of previous conviction.¹⁹ An indictment can be dismissed only upon writ-

¹³ *American Bar Association Report*, 1927, p. 468.

¹⁴ A justice of the supreme court of Missouri comments on the survey in the *American Bar Association Journal*, vol. 13, p. 726.

¹⁵ *Laws of 1926*, Ch. 457.

¹⁶ *Ibid.*, Ch. 705.

¹⁷ *Laws of 1928*, Ch. 354.

¹⁸ *Laws of 1926*, Ch. 461.

¹⁹ *Laws of 1927*, Ch. 266.

ten statements of reasons therefor by the court.²⁰ The 1929 session of the legislature enacted a simplified form of indictment, designed to avoid technical litigation. A simple indictment must be followed by a bill of particulars if demanded.²¹ A jury may consider the evidence of one delivering stolen goods in the trial of one accused of receiving them, even though the witness may have been convicted of their theft.²²

Legislation regarding bail attempted to overcome certain abuses. Security for bail bond must be sworn by affidavit.²³ Bail is made more difficult for serious felonies and certain misdemeanors—illegally using, carrying, or possessing a pistol or other dangerous weapon; making or possessing burglar's instruments; buying or receiving stolen property; unlawful entry of a building; aiding escape from prison; and unlawfully possessing or distributing habit-forming drugs.²⁴ Jumping of bail was made a felony,²⁵ and bail is denied during appeal on conviction of a fourth felony or if the defendant is convicted of a felony committed while armed with a weapon.²⁶

Appeals must now be taken within thirty days after judgment.²⁷ If an appeal is not heard within ninety days, the defendant is to surrender himself and the judgment is executed.²⁸ Only one appeal is now permitted,²⁹ and appeal by the people is permitted in certain cases.³⁰

In 1928 there was a determined effort to strengthen probation and parole. A division of probation was established in the department of correction under the supervision of a director of probation and three examiners, both director and examiners to be members of the competitive civil service. The director is to supervise probation work in all parts of the state, and has power to make and enforce rules, and may recommend the removal of probation officers.³¹ Local probation officers are to be appointed and dismissed by the court, and are to be members of the competitive civil service. They must possess the equivalent of a

²⁰ *Laws of 1927*, Ch. 596.

²¹ *Post Standard*, Syracuse, N. Y., March 30, 1929.

²² *Laws of 1928*, Ch. 170.

²³ *Laws of 1926*, Ch. 418.

²⁴ *Ibid.*, Ch. 419.

²⁵ *Laws of 1928*, Ch. 374.

²⁶ *Ibid.*, Ch. 639.

²⁷ *Laws of 1926*, Ch. 416.

²⁸ *Ibid.*, Ch. 464.

²⁹ *Ibid.*, Ch. 465.

³⁰ *Laws of 1927*, Ch. 337.

³¹ *Laws of 1928*, Ch. 313.

high school education and have certain character requisites. The duties of probation officers are defined, and courts are charged with the duty of furnishing clinical facilities and psychiatric examinations.³² The following are not eligible to probation: (a) persons convicted of a crime punishable by death or life imprisonment; (b) persons convicted of a fourth felony under the habitual criminal law; and (c) persons convicted of a felony committed while armed with a weapon.³³ A department of parole, with a board of parole, was established. Parole officers were to have minimum educational requirements, and were to be placed in the competitive civil service.³⁴

Principal enactments of the 1929 legislature were two constitutional amendments. One, which will go to the voters in the fall of 1929, creates district criminal courts in counties in place of courts of special sessions conducted by justices of the peace. The other requires repassage by the legislature in 1931. It would permit defendants charged with felonies to waive the formality of indictment and receive immediate sentence to prison. The simpler form of indictment has already been referred to. The running of the statute of limitations is suspended from the time of indictment or the filing of the information until the determination of trial on merits.³⁵

II. SURVEYS WITH MAJOR TANGIBLE RESULTS

Several crime surveys have been able to secure immediate enactment of a major legislative program. Among these are New York (whose enactments have just been described), California, Michigan, and perhaps Ohio.

California. The California legislature of 1925 created a commission to study criminal procedure which reported to the forty-seventh legislature in January, 1927.³⁶ That body enacted into law a surprisingly large percentage of the commission's recommendations, the chief of which follow. The district attorney is required to file the information within fifteen days after the accused has been committed by a magistrate,³⁷ before whom he must have been taken within two days of his

³² *Laws of 1928*, Ch. 460.

³³ *Ibid.*, Ch. 841.

³⁴ *Ibid.*, Chs. 485, 490.

³⁵ *Post Standard*, Syracuse, N. Y., March 30, 1929.

³⁶ *Report of the Commission for the Reform of Criminal Procedure to the Legislature*, Sacramento, 1927; *California Legislature, Forty-seventh Session, Assembly Daily Journal*, January 13, 1927, pp. 2-19.

³⁷ *Statutes of California*, 1927, p. 1045, amending Penal Code, Sec. 809.

arrest.³⁸ The court is required to set all criminal cases for trial for a date not later than thirty days after the date of entry of the plea of the defendant. Continuance may be granted only upon conclusive proof that the ends of justice so require. If a court is unable to hear all cases pending before it in thirty days, it must notify the chairman of the judicial council.³⁹ Criminal cases are given precedence over civil matters.⁴⁰ All appeals in criminal cases are to be set and called for hearing within thirty days of the filing of the record in the appellate court. Continuances are to be granted only in exceptional cases, and never upon mere stipulation of counsel. On an appeal by the defendant, the appellate court must, in addition to the issues raised by the defendant, consider and pass upon rulings adverse to the state, if requested by the attorney-general.⁴¹ The commission recommended that the judge be permitted to select the jury and that he might, "in his discretion, permit reasonable examination of the prospective jurors by counsel for the people and for the defendant."⁴² The clause actually enacted makes it the duty of the trial court to select the jury, but adds that he "shall permit reasonable examination of prospective jurors by counsel for the people and for the defendant."⁴³ Some causes for technical wrangling and delay were eliminated by combining what formerly constituted several different offenses under a new definition of theft.⁴⁴

The habitual criminal statute was amended so as to require life sentence without parole after conviction for the fourth felony and to permit proof of prior convictions during trial or after conviction and sentence.⁴⁵ Technical defects in indictments, informations, or complaints which do not prejudice a substantial right of the defendant cannot affect trial upon the merits of the case.⁴⁶

The new provisions regarding the insanity plea are among the most interesting of the enactments. The defendant may plead "not guilty,

³⁸ *Statutes of California*, 1927, pp.1044-1045, amending Penal Code, Sec. 825.

³⁹ *Ibid.*, p. 1036, adding new section 1050 to Penal Code.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*, pp. 1047-1048, amending Penal Code, Sec. 1252.

⁴² *Report of the Commission for the Reform of Criminal Procedure*, p. 1919.

⁴³ *Statutes of California*, 1927, p. 1029, amending Penal Code, Sec. 1078.

⁴⁴ *Ibid.*, p. 1046, amending Penal Code, Secs. 484-485.

⁴⁵ *Ibid.*, p. 1066, amending Penal Code, Sec. 644, and p. 1064, adding to the Penal Code new section 969a.

⁴⁶ *Ibid.*, p. 1065, amending Penal Code, Sec. 960; also pp. 1040-1043, amending Penal Code, Secs. 954, 956, 951, 952.

by reason of insanity," or he may combine that plea with the plea of "not guilty." In case of the combined pleas, the defendant is immediately tried upon the merits for the crime charged. If in such a trial he is found guilty, or if the plea of insanity is his sole plea, the issue as to whether he was insane at the time of committing the crime is tried before a jury as the sole issue. If he is found sane, the accused is sentenced for the offense for which he was previously convicted, or if the plea of insanity was the only plea for the offense charged. If the defendant is found insane he is confined to the state hospital for the criminal insane, from which he cannot be released until the court which committed him, or the superior court of the county in which he is confined, finds that his sanity has been restored.⁴⁷

Among the various enactments aimed at expediting the progress of the trial was a general provision intended to give the judge greater control over the trial and evidence.⁴⁸ The district attorney was given the power to amend an indictment any time before pleading, with the further provision that the court might amend it for any defect or insufficiency at any stage of the proceedings.⁴⁹ The court was given the discretionary power of selecting two alternate jurors to replace those who might become ill during a protracted trial.⁵⁰ If a juror should have become ill after these alternates had become regular jurors, a new juror might be sworn and the trial begin anew.⁵¹ Peremptory challenges of prospective jurors were equalized between state and defendant—twenty each for capital and life offenses and ten each for others.⁵²

Probation is denied to those armed with a deadly weapon at the time of committing a crime, and to any one previously convicted of a felony.⁵³ Minimum sentences of seven and fifteen years were es-

⁴⁷ *Ibid.*, pp. 1148-1149, amending Penal Code, Secs. 1016, 1017, and adding new section 1026. See also Charles W. Fricke "Some of the Important Changes in California Criminal Law," *Journal of Delinquency*, Vol. 11, September, 1927, p. 188.

⁴⁸ *Statutes of California*, 1927, p. 1040, adding to the Penal Code new section 1044.

⁴⁹ *Ibid.*, pp. 1040-1041, amending Penal Code, Sec. 1008.

⁵⁰ *Ibid.*, p. 1063, amending Penal Code, Sec. 1089.

⁵¹ *Ibid.*, p. 1038, amending Penal Code, Sec. 1123.

⁵² *Ibid.*, p. 1062, amending Penal Code, Sec. 1070.

⁵³ *Ibid.*, p. 1493, amending Penal Code, Sec. 1203. Adverse criticism of this law may be found in Fricke, "Crime Laws of California," *Journal of Delinquency*, Vol. 12, March, 1928, p. 45.

tablished for those armed with deadly weapons when committing a crime, but prison authorities were given certain discretionary authority in reducing these minimums.⁵⁴ The principal bail legislation permitted the court to enter summary judgment against the surety within ninety days of the forfeiture of the bail bond, the court being empowered to set aside the forfeiture if the accused appears in court within the ninety days.⁵⁵ The recommendation that bail bond be a lien on property and binding even in case of subsequent transfer seems not to have been adopted.

Only one of the eight constitutional amendments proposed by the commission was submitted by the legislature, i. e., that permitting the defendant to waive trial by jury in felony cases;⁵⁶ and it was approved by the people in November, 1928. Other important proposed amendments would have given the judge the power to comment to the jury on the character of witnesses and evidence, and would have permitted the jury to consider the fact that the defendant failed to take the stand in his own defense. The legislature seems, for the most part, to have gone the full distance of the commission's recommendations. These recommendations were not accompanied by reports of extended research as in New York or Missouri. They were contained in a small forty-page pamphlet, and were introduced in the form of previously drafted bills ready for consideration.

The legislature of 1927 provided for the continuance of the work of the Commission for the Reform of Criminal Procedure by a body known as the California Crime Commission, which duly reported a series of recommendations to the 1929 legislative session.⁵⁷ A number of specific enactments followed. Courts are forbidden to accept as surety on bail any one against whom a summary judgment has remained unpaid for more than ten days. A provision stipulating that undertakings for bail shall be by written order of the court is aimed to correct the evil of easy bail by telephone. Another bail act provides that forfeited bail shall go into a trust fund for one year, from which the surety may redeem his funds by producing the defendant.⁵⁸ The duties and pow-

⁵⁴ *Statutes of California*, 1927, pp. 1491-1493, amending Penal Code, Sec. 1168.

⁵⁵ *Ibid.*, pp. 1385-1388, amending Penal Code, Secs. 1305, 1306, 1288, 1278, 1287, and adding new section 1275.

⁵⁶ *Ibid.*, 1927, p. 2367.

⁵⁷ *Report of the California Crime Commission*, Sacramento, 1929.

⁵⁸ *Statutes of California*, 1929, Chs. 383, 299, 849.

ers of the state bureau of criminal identification and investigation were amplified in three respects: (1) provision for a limited number of trained criminal investigators to aid local peace officers; (2) the bureau is authorized to establish police schools; and (3) a statistician is to be appointed, with the power and duty to collect, compile, and publish criminal statistics.⁵⁹ Hospitals and physicians are required to report wounds and injuries treated. Standardized instructions on flight and expert witnesses were prepared.⁶⁰ Probation cannot be granted without consulting the probation officer, whose report is made a part of the record in the case. The courts are now required to appoint alienists to examine the defendant and give non-partisan expert testimony in cases where insanity is the plea. Provision is made for a new intermediate prison for young men and a new prison for women. The state department of social welfare is authorized to conduct investigations on probation.⁶¹ There was created a state department of penology under a director appointed by the governor, holding office at the governor's pleasure, and serving as a member of the governor's council. Six boards and bureaus are placed in this department for administrative purposes. The California Crime Commission is given a permanent statutory status. Twenty-four-hour elementary schools for the purpose of studying problem children were authorized.⁶² In addition to minor changes in parole procedure, numerous changes were made in the substantive criminal law.⁶³

Michigan. The 1926 extra session of the Michigan legislature established "a Commission of Inquiry into Criminal Procedure,"⁶⁴ consisting of three members of the senate, three members of the lower house, and a seventh appointed by the governor.⁶⁵ No extensive field survey was conducted. Mr. Shirley Stewart, a member of the commission, shouldered most of the responsibility for an examination of crime surveys and the work of similar commissions elsewhere, chiefly in New York.⁶⁶ As a result of this inquiry, there was introduced in the 1927

⁵⁹ *Statutes of California*, 1929, Ch. 788.

⁶⁰ *Ibid.*, 1929, Chs. 417, 875, 786.

⁶¹ *Ibid.*, 1929, Chs. 737, 385, 684, 248, 512.

⁶² *Ibid.*, 1929, Chs. 191, 544, 866.

⁶³ See A. M. Kidd, "California Legislation in Regard to Crime for 1929," *California Law Review*, Vol. XVII, July, 1929, p. 537.

⁶⁴ *Report of Commission of Inquiry into Criminal Procedure*, 1927, p. 3.

⁶⁵ Letter from Sherman D. Callender, chairman, addressed to the writer on October 19, 1928.

⁶⁶ Letter from Robert M. Toms, formerly prosecuting attorney of Wayne

session of the legislature a new draft code of criminal procedure. With one exception, the principal recommendations of the commission were enacted into law.⁶⁷

Defendants were given the option of waiving trial by jury in favor of trial by judge.⁶⁸ No "technical variance between indictment and proof shall be considered jeopardy and grounds for dismissal of a subsequent action."⁶⁹ Courts were permitted "to refuse to accept as surety a person who is on one or more bonds" in the same court, and provisions were enacted "to make the collection of defaulted bail bonds more definite and certain."⁷⁰ Continuances of examinations were forbidden except for good cause shown, and "no continuance by consent of the prosecution and defense may be had unless a manifest injustice will be done."⁷¹ Chapter VII of both report and code aim to avoid the dismissal of cases on technical grounds before actual trial.

Criminal cases take precedence over others. Continuance of a trial cannot take place on mere consent, and in any instance only upon strict necessity. The court is given the discretion of trying jointly or separately those accused of jointly committing a crime. The report recommended an equal number of peremptory challenges for the state and the defense, five each for offenses not involving life imprisonment or capital punishment, and fifteen each for cases involving such sentences, each defendant being allowed to challenge his own jurors in case of joint trial. This provision was enacted, with the exception that in cases involving life imprisonment or death the state was permitted fifteen, while the defense was allowed twenty instead of the former thirty.⁷² The prosecuting attorney must be notified by the defendant at least four days before the trial of his intention to plead an alibi or insanity.⁷³ The commission's recommendation that the prosecuting attorney be

county, in which Detroit is located, and now on the bench in the same city, addressed to the writer on October 18, 1928; *Report of the Commission*, pp. 3-5.

⁶⁷ The legislature failed to accept the commission's recommendation to comment upon the defendant's failure to take the stand and testify in his own defense. *Report of the Commission*, p. 13; letter to the writer from Sherman D. Callender, chairman of the commission, dated October 19, 1928.

⁶⁸ *Code of Criminal Procedure*, 1927, Ch. 3; Sec. 3, *Report of the Commission*, pp. 8-9.

⁶⁹ *Report*, p. 9; *Code*, Ch. 3, Sec. 6.

⁷⁰ *Report*, pp. 10-11; *Code*, Ch. 5.

⁷¹ *Report*, p. 11; *Code*, Ch. 6, Sec. 7.

⁷² *Report*, p. 12; *Code*, Ch. 8, Sec. 1, 2, 5, 12.

⁷³ *Report*, p. 13; *Code*, Ch. 8, Sec. 20, 21.

allowed to comment upon the defendant's failure to take the witness stand in his own defense⁷⁴ was not enacted, but the provision that the judge be allowed to comment upon the evidence did become law. "The court shall instruct the jury as to the law applicable to the case and in his charge make such comment on the evidence, the testimony and character of any witnesses, as in his opinion the interest of justice may require."⁷⁵

It was made mandatory to sentence a defendant to life imprisonment upon the fourth conviction of a felony. Increased penalties were provided for second and third convictions, in which cases parole cannot be granted before the expiration of the sentence without the consent of the sentencing judge or his successors.⁷⁶ The reduction of the number of dilatory appeals is attempted by leaving the matter of appeals to the discretion of the Supreme Court, or any justice thereof, giving the appellant the opportunity to present his case to that tribunal by means of a concrete statement rather than a cumbersome record.⁷⁷

The 1929 session of the Michigan legislature made some slight changes in the new code. Prosecuting attorneys had previously been required to secure the approval of the court for entering a *nolle prosequi*. Now they must state on the record the reasons therefor.⁷⁸ At least four days before trial, a defendant who desires to claim an alibi must furnish the prosecuting attorney in writing "specific information as to the place at which the accused claims to have been at the time of the alleged offense."⁷⁹ The habitual criminal act was changed to recognize two classes of felonies for sentencing fourth offenders: if a sentence of imprisonment for five years were possible upon first conviction, the fourth offender must go to prison for life; otherwise his fourth sentence will range from seven and one-half to fifteen years.⁸⁰

⁷⁴ *Report*, pp. 13-14.

⁷⁵ *Code*, Ch. 8, Sec. 29.

⁷⁶ *Report*, p. 15; *Code*, Ch. 9, Secs. 10, 11, 12.

⁷⁷ *Report*, pp. 15-16; *Code*, Ch. 10.

⁷⁸ House Enrolled Act No. 21, 55th Legislature, 1929, amending *The Code of Criminal Procedure*, Ch. 7, Sec. 29. These acts were furnished by the secretary of state. At the time of writing, official copies of bound session laws were not available.

⁷⁹ *Ibid.*, amending *The Code of Criminal Procedure*, Ch. 8, Sec. 20.

⁸⁰ *Ibid.*, amending *The Code of Criminal Procedure*, Ch. 9, Sec. 12. The writer was unable to find legislation amending the *Code of Criminal Procedure* so as to remove from the operation of the habitual criminal law liquor felonies such as

Ohio. The 1927 session of the Ohio legislature passed a joint resolution authorizing the appointment of a committee to revise the Ohio criminal code. The appropriation for its support was vetoed by the governor, A. V. Donahey; whereupon the Ohio State Bar Association entered the breach with a committee of its own and presented a revised code for the consideration of the 1929 legislature.⁸¹ Some of the more important enactments follow.

Sureties for bail are required to exhibit to the judge satisfactory evidence of ownership of Ohio real property of twice the value of the recognizance, in excess of all incumbrances, or present cash, government bonds, or certificates of deposit equal to the amount of the bond. Bonds secured by real property constitute a lien thereon. The court in which the prosecution is brought may enter judgment for all or any part of the bond if the sureties do not produce the accused within twenty days after he has failed to appear.⁸² Simplified forms of indictment are provided, and it is stipulated that indictments shall not be invalid for a specified list of technicalities "or for other defects or imperfections which do not tend to prejudice the substantial rights of the defendant upon the merits." Provision is made also for amendment of the indictment by the court during trial.⁸³ If it is brought to the notice of the court that an accused person is not sane, the court may have the matter of insanity tried by a jury, three-fourths of which may reach a decision; or the court may reach a decision without a jury. If the accused is found sane, he is to stand trial on the merits. If he is found insane, he is to be committed to a hospital until his reason is restored. If the plea has been "not guilty, by reason of insanity," and the jury so finds, the accused must be committed to Lima State Hospital. Release can be secured only after the restoration of sanity has been found by a board consisting of the superintendent of that hospital, the judge of the court of common pleas of Allen county, and an alienist to be designated by said judge, and upon the further condition "that his release will not

have attracted much newspaper publicity. Possibly this was accomplished by amending the substantive law, copies of which were not available at the time of writing.

⁸¹ Letter from Leona M. Esch, operating director of the Cleveland Association of Criminal Justice, dated October 23, 1928, 1 *Ohio Bar*, No. 37, December 11, 1928.

⁸² Amended Senate Bill No. 8. An Act to Revise and Codify the Code of Criminal Procedure of Ohio, etc., 1929, Ch. 14.

⁸³ *Ibid.*, Ch. 16.

be dangerous." In any case where the question of insanity enters, the accused may be placed under observation of experts appointed by the court for not more than one month.⁸⁴

All criminal cases must be set for trial not later than thirty days from the entry of the plea. Continuances are to be granted only upon proof of the necessity thereof in open court. Criminal cases are given precedence over civil matters. A defendant is given the privilege of waiving trial by jury in all criminal cases. Joint trial of those jointly indicted is permitted except in capital cases.⁸⁵ Two California jury provisions were enacted. It is the judge's duty to examine prospective jurors, permitting reasonable examination by counsel, and alternate jurors may be provided. Prosecution and defense are allowed an equal number of peremptory challenges.⁸⁶ The failure of the accused person to testify "may be considered by the court and jury and may be made the subject of comment by counsel."⁸⁷ Review by an appellate court upon petition in error stands as a matter of right for thirty days after sentence or judgment; after thirty days, only by leave of the court or two judges thereof. The accused must perfect the appeal and furnish the transcript. Hearings on petitions in error have precedence over all other business. The prosecution's brief must be filed within fifteen days after the petition is filed.⁸⁸

III. SURVEYS WITH MINOR TANGIBLE RESULTS

Other crime surveys have been able to secure the immediate enactment of a minor portion of their recommendations. These include the inquiries in Indiana, Louisiana, Minnesota, Pennsylvania, and Rhode Island.

Indiana. At its 1926 meeting the Indiana State Bar Association voted to establish a committee "to draft a revision of the criminal code of Indiana, or propose amendments thereto."⁸⁹ A number of the findings of this committee were contained in an article written by Professor James J. Robinson, of the Indiana University School of Law, and published in the *Indiana Law Journal* for December, 1926. In a

⁸⁴ Amended Senate Bill No. 8, Ch. 20.

⁸⁵ *Ibid.*, Ch. 21.

⁸⁶ *Ibid.*, Ch. 22.

⁸⁷ *Ibid.*, Ch. 23, Sec. 3. It would seem, however, that a similar provision has been a part of the Ohio law for some time.

⁸⁸ *Ibid.*, Ch. 38.

⁸⁹ *Indiana Law Journal*, Vol. 2, p. 218, note 4.

referendum to the Indiana bar only four of the thirty-four proposals were rejected. Twenty-one of the remainder were submitted for the consideration of the 1927 session of the legislature.⁹⁰ Of the resulting statutes,^{90a} those regarding bail seem to the writer to be more drastic than any of the current enactments in other states. Judgment and certification for execution on bond are to be entered by the judge of the court against whom it was forfeited, without separate trial, pleadings, or change of venue. Bondsmen must state and describe their property on oath and list the other bonds upon which they are surety, and at the same time declare that they are surety on no bond remaining unpaid. False statement constitutes perjury. Clerks and sheriffs are liable to the state from future salary for failure to execute.⁹¹ Bonds are made a lien upon all lands owned by the surety in the county from the date of docketing the case.⁹² Sureties are required to be resident freeholders of the county and must possess property in the state equal in value to twice the amount of the bond.⁹³

Several other recommendations were enacted into law, some of them in modified form. Appeals from justice, mayor, or city courts must be made within ten days of judgment, and all papers necessary to perfect appeal must be filed within fifteen days of judgment.⁹⁴ All public offenses, except treason and murder, may now be prosecuted by affidavit (prosecution on the initiative of the prosecutor without preliminary hearing).⁹⁵ A conviction cannot be invalidated on appeal because of failure of the record to show arraignment and plea.⁹⁶ An affidavit for change of judge or change of venue must be filed ten days before the date set for trial.⁹⁷ There was enacted a provision designed to avoid continuances which merely aim at delay.⁹⁸ Interstate reciprocity or service of subpoenas is now possible.⁹⁹ A person convicted

⁹⁰ *Indiana Law Journal*, Vol. 2, p. 316-321.

^{90a} William A. Pickens, president of the Indiana Bar Association, reviews this legislation in *Indiana Law Journal*, Vol. 2, pp. 474-477.

⁹¹ *Laws of Indiana*, 1927, Ch. 132, Sec. 2.

⁹² *Ibid.*, Ch. 132, Sec. 3.

⁹³ *Ibid.*, Ch. 132, Sec. 6.

⁹⁴ *Ibid.*, Ch. 132, Sec. 1.

⁹⁵ *Ibid.*, Ch. 132, Sec. 4. The writer is indebted to Dean Justin Miller, of the Law School of the University of Southern California, for an explanation of this use of the word affidavit.

⁹⁶ *Ibid.*, Ch. 132, Sec. 6.

⁹⁷ *Ibid.*, Ch. 132, Sec. 10.

⁹⁸ *Ibid.*, Ch. 132, Secs. 11-12.

⁹⁹ *Ibid.*, Ch. 132, Sec. 13.

and fined is required to stand committed until his fine is paid or replevied.¹⁰⁰ All appeals must now be taken within one hundred and eighty days after judgment or within one hundred and eighty days after motion for a new trial. Transcript must be filed within sixty days after appeal is taken.¹⁰¹ The only one of the several proposed constitutional amendments to be initiated by the legislature was that repealing the provision permitting all voters to practice law.¹⁰² A state bureau of criminal identification and investigation was established, with an annual appropriation of \$30,000.¹⁰³ In case of the plea of insanity by the defense, the court is authorized to appoint two or three disinterested physicians whose testimony is to follow that of the medical experts hired by the state and defense.¹⁰⁴

The criminal legislation of the 1929 session of the Indiana legislature was for the most part substantive in nature. It is deemed worthy of notice, however, because of its drastic nature in dealing with certain types of crime. Whoever inflicts a wound or other physical injury while committing a robbery, "or while attempting to commit robbery, shall, on conviction, be imprisoned in the state prison for life."¹⁰⁵ The same provision is made to apply to burglary.¹⁰⁶ The crime of "automobile banditry" is defined as the commission of or attempt to commit a felony while "having at the time on or near the premises where such felony is attempted or committed an automobile, motorcycle, aeroplane, or other self-moving conveyance, by the use of which he or they escape or attempt to escape or intend to escape, or having attempted or committed such felony, he or they seize an automobile, motorcycle, aeroplane, or other self-moving conveyance, by the use of which he or they escape or attempt to escape." The penalty is placed at from ten to twenty-five years' imprisonment;¹⁰⁷ no court can suspend or commute sentence for any of the foregoing offenses; nor can a defendant be found guilty of an offense less than that charged.¹⁰⁸ A blow at fences is attempted in a statute requiring "auction sale barns" to keep a record of goods pur-

¹⁰⁰ *Laws of Indiana, 1927*, Ch. 132, Sec. 15.

¹⁰¹ *Ibid.*, Ch. 132, Sec. 16.

¹⁰² *Ibid.*, Ch. 268. Passed again in 1929. See *Laws of Indiana, 1929*, Ch. 235.

¹⁰³ *Ibid.*, Ch. 216. This was continued for the biennium 1929-30. *Laws of Indiana, 1929*, Ch. 116.

¹⁰⁴ *Ibid.*, Ch. 102.

¹⁰⁵ *Laws of Indiana, 1929*, Ch. 54, Sec. 1.

¹⁰⁶ *Ibid.*, Ch. 54, Sec. 2.

¹⁰⁷ *Ibid.*, Ch. 54, Sec. 3.

¹⁰⁸ *Ibid.*, Ch. 54, Secs. 5-6.

chased and from whom purchased and goods sold and to whom sold.¹⁰⁹ Another statute makes it unlawful to sell, barter, exchange, give away, use, operate, or possess armored motor vehicles except in certain specified instances.¹¹⁰

Louisiana. Probably the most remarkable feature of Louisiana's recent attempt to overhaul her criminal code was the establishment of a survey commission by constitutional amendment proposed by the 1926 legislature and adopted by the people in November of that year.¹¹¹ This commission was to be composed of three lawyers of the state, who were to report to the 1928 legislature; and the latter's procedure was modified for the occasion. Constitutional formalities were to be dispensed with; all amendments to the proposals were to be offered in the first twenty days after convening and were to be referred to a joint committee of both houses consisting of two members from each house, with the attorney-general as ex-officio chairman. Only those amendments favorably reported by the committee were to be voted on, and each amendment had to be voted on separately.¹¹²

The changes actually accomplished were not as drastic as might have been expected. Only the most important, in the light of experience elsewhere, will be mentioned here. The power to issue search warrants was extended.¹¹³ Securing bond was made more difficult, and the court was required to enter immediate judgment against the surety in case of forfeiture¹¹⁴. It seems that gubernatorial appointment of jury commissioners in the parish of Orleans had led to abuses, and the commission recommended the transfer of this power to the courts; but the legislature made the transfer in all parishes except Orleans¹¹⁵. The form of indictments was simplified and made flexible¹¹⁶. Plea of insanity must be tried and disposed of prior to any trial on plea of not guilty, and no evidence of insanity is admissible in the trial of the plea of not guilty.¹¹⁷ State and defense were given an equal number of peremptory challenges¹¹⁸.

¹⁰⁹ *Laws of Indiana, 1927*, Ch. 117.

¹¹⁰ *Ibid.*, Ch. 203.

¹¹¹ Louisiana Session Laws, 1926, Act No. 262; *Code of Criminal Procedure*, 1928, p. 1.

¹¹² Louisiana Session Laws, 1926, Act No. 276.

¹¹³ Title 8 in both draft and enacted codes.

¹¹⁴ Title 11 in both draft and enacted codes.

¹¹⁵ Title 18, Ch. 3, in both draft and enacted codes.

¹¹⁶ Title 19 in both draft and enacted codes.

¹¹⁷ Title 20, Ch. 4, in both draft and enacted codes.

¹¹⁸ Enacted Code, Art. 354; Draft Code, Art. 357.

Both the draft and enacted codes provided that nine out of twelve jurors may reach a verdict in certain felony cases. In capital offenses a jury of twelve must unanimously concur to reach a verdict. In certain other felony cases a unanimous decision of a jury of five is required to reach a verdict.¹¹⁹ It should be noted, however, that Louisiana has permitted the less than unanimous verdict in certain criminal cases for a number of years. The draft code eliminated the law which forbids the district attorney and the judge to discuss and comment on the defendant's failure to testify,¹²⁰ and we cannot find that it was reinserted in the enacted code. A defendant who testifies in his own behalf may be cross-examined on the whole case.¹²¹ A "harmless error" provision avoids the setting aside of judgments on appeal because of mere technicalities¹²². A system of crime reporting will furnish a state-wide survey of criminal statistics to be published semi-annually.¹²³

Minnesota. Governor Theodore Christianson created the Minnesota Crime Commission by executive order on January 6, 1926. It consisted of prominent judges, lawyers, educators, laymen, and the presiding officers and chairmen of the judiciary committees of both houses of the state legislature—twenty-five in all. The recommendations¹²⁴ of this body were embodied in twenty-five proposed bills, of which the house passed all but two and the senate passed nine. Eight became laws.¹²⁵ These included the establishment of a state criminal apprehension bureau,¹²⁶ with adequate records for identification, and with authority to coöperate with local peace officers. An habitual criminal statute was enacted, providing for harsher sentences for subsequent convictions of felonies and for life imprisonment on the fourth conviction if that was within the range of sentences for first

¹¹⁹ Draft Code, Title 23; Enacted Code, Title 22.

¹²⁰ Draft Code, p. 6.

¹²¹ Draft Code, Art. 466; Enacted Code, Art. 462.

¹²² Draft Code, p. 7; Enacted Code, Art. 557.

¹²³ Draft Code, Title 32; Enacted Code, Title 31.

¹²⁴ The Minnesota Crime Commission's report was published as a supplement to the *Minnesota Law Review*, Vol. 11.

¹²⁵ See mimeographed report of the National Crime Commission Conference at Washington, November 2 and 3, 1927; Oscar Hallam's address on Minnesota Crime Commission, November 2, pp. 15-17.

¹²⁶ *Session Laws of Minnesota*, 1927, Ch. 224, p. 318; *Minnesota Crime Commission Report*, p. 20.

conviction of the same crime.¹²⁷ Another act empowers the court to sentence for a minimum of five years any person committing a felony while armed with a gun, with intent to use the weapon in the commission of the crime.¹²⁸ Indictments may be amended by the prosecuting attorney any time before trial, but the defense is given four days to prepare defense under the amendment.¹²⁹ The court may dismiss any action, but must cause a public record of the reasons therefor to be made.¹³⁰ Whenever a plea of guilty is accepted for an offense less than that charged, a written record of the reasons must be made.¹³¹ It is made discretionary with the court whether surety on bail bonds shall make an affidavit declaring what other bonds they are surety on, location and value of property pledged, its liens or incumbrances, etc. The clerk of every court of record is required to keep a permanent record of sureties and certain facts relating thereto.¹³² An examination of the Minnesota session laws for 1929 reveals but one act of any significance relating to crime, i.e., a provision requiring health records of school children to be kept, such records to be introduced as evidence whenever a child comes before the juvenile court.¹³³ These enactments, while undoubtedly worth while, do not begin to approach the thorough-going reforms proposed by the commission.

Pennsylvania. On May 13, 1927, the General Assembly of Pennsylvania authorized the establishment of a commission to study the laws and practices relating to crime in that commonwealth. This body duly met and functioned under the chairmanship of Mr. Charles E. Fox. By January 1, 1929, it submitted to the General Assembly a report¹³⁴ containing eighteen drafted bills recommended

¹²⁷ *Session Laws of Minnesota*, 1927, Ch. 236, pp. 337-339; *Minnesota Crime Commission Report*, pp. 40-41.

¹²⁸ *Session Laws of Minnesota*, 1927, Ch. 294, p. 407; *Minnesota Crime Commission Report*, p. 39.

¹²⁹ *Session Laws of Minnesota*, 1927, Ch. 297, p. 410; *Minnesota Crime Commission Report*, p. 30.

¹³⁰ *Session Laws of Minnesota*, 1927, Ch. 296, p. 410; *Minnesota Crime Commission Report*, p. 31.

¹³¹ *Session Laws of Minnesota*, 1927, Ch. 255, p. 378; *Minnesota Crime Commission Report*, p. 31.

¹³² *Session Laws of Minnesota*, 1927, Ch. 233, pp. 334-355; *Minnesota Crime Commission Report*, p. 35.

¹³³ *Session Laws of Minnesota*, 1929, Ch. 277.

¹³⁴ *Report to the General Assembly Meeting in 1929 of the Commission Appointed to Study the Laws, Procedure, etc., Relating to Crime and Criminals.*

for passage, of which eight were finally passed in somewhat modified form. One of the latter provides for reciprocity of extra-state subpoena of witnesses.¹³⁵ An effort was made to establish a state board of parole commissioners, with a state supervisor of paroles subject to the board and in charge of local parole agents selected by the supervisor subject to standards set by the board. As finally passed, the work was given to an existing board of pardons, and the supervisor of paroles was made responsible directly to the attorney-general.¹³⁶ Two other acts had to do with breach of parole. The department of justice was authorized to collect crime statistics from local officers and publish them semi-annually in a form such as to permit ready comparison.¹³⁷ Probably the most interesting enactment was the habitual criminal law. The matter of a life sentence for conviction of the fourth felony is left to the discretion of the judge. Moreover, if five years intervene between offenses, the subsequent conviction does not count under the habitual criminal statute. Only time while at liberty, not prison time, counts in reckoning the five years.¹³⁸ The commission was continued with an appropriation of \$15,000.¹³⁹

Rhode Island. In 1927 the legislature of Rhode Island established a Criminal Law Advisory Commission, a continuing body which made its first annual report to the legislative session of 1928. Several enactments resulted. The presiding justice of the superior court of Providence and Bristol counties is authorized to assign an additional judge for criminal matters upon the request of the attorney-general. The method of making up jury lists was modified. Statistics on criminal actions are to be reported annually by the clerks of the various courts to the secretary of state. A report upon the status of prosecutions during the year must be made annually by the attorney-general to the governor.¹⁴⁰

¹³⁵ Act No. 10, *Report*, p. 94; Senate File 272. These acts, furnished by the legislative reference bureau, could not be verified with session laws at time of writing.

¹³⁶ Act No. 11, *Report*, pp. 95-100; Senate File 309.

¹³⁷ Act No. 18, *Report*, p. 117; House File 683.

¹³⁸ Act No. 14, *Report*, p. 101; Senate File 317.

¹³⁹ Act No. 17, *Report*, p. 115; House File 566.

¹⁴⁰ Session laws of 1928 were not available to the writer. This information was taken from a copy of *First Annual Report of the Criminal Law Advisory Commission*, 1928, marked by Harold A. Andrews, secretary of the commission. See also *Journal of the American Institute of Criminal Law and Criminology*, Vol. 19, p. 269; *Public Laws of Rhode Island*, 1927-28, Chs. 940, 950, 977, 1192, 1193.

IV. PERMANENT VOLUNTARY ASSOCIATIONS

Another type of voluntary association has a permanent organization which is in constant touch with the crime situation in its municipality. Such is the Cleveland Association for Criminal Justice (referred to elsewhere in this article), the Baltimore Criminal Justice Commission, and the Chicago Crime Commission. The Cincinnati Bureau of Municipal Research is also devoting a part of its efforts and resources to crime problems.

Baltimore. The Baltimore Criminal Justice Commission was established in 1922 upon the initiative of the board of trade of that city during a wave of popular indignation occasioned by a particularly atrocious murder committed during a daylight robbery.¹⁴¹ Supported by private funds, the commission immediately set out to survey the actual conditions of crime in Baltimore, the results of the investigation being published in the first annual report covering the year 1923. Statistics of all agencies having to do with crime were gathered and for the first time correlated in a single place. An attempt has been made to stimulate public interest in the situation by periodically publishing the results of investigations. It is said that arrests now occur in one out of every two reported crimes, whereas formerly the ratio was one out of five or six. "Cases are tried with a degree of promptness unparalleled in the United States as far as any known records show, as ninety-two per cent of the cases tried are tried within three weeks of the date of arrest."¹⁴² The commission recently called attention to the fact that Baltimore stands first among the eight cities listed by Raymond Moley for finally punishing those actually arrested, Baltimore having a percentage of fifty-one as against seventeen for New York and fifteen for Chicago.¹⁴³ A complete investigation of probation disclosed facts which led to a considerable curtailment of unscientific practices in that matter.¹⁴⁴ During the first quarter of 1929 sentences were imposed in ninety-six per cent of the

¹⁴¹ First Annual Report of the Baltimore Criminal Justice Commission, 1923, p. 3; James M. Hepbron, "Local Crime Commissions," *Scientific Monthly*, Vol. 24, May, 1927, pp. 426-431.

¹⁴² James M. Hepbron, in *Scientific Monthly*, Vol. 24, May, 1927, p. 430.

¹⁴³ Moley, *Politics and Criminal Prosecution*, p. 28; Sixth Annual Report, 1928, Baltimore Criminal Justice Commission.

¹⁴⁴ James M. Hepbron, *Probation and Penal Treatment in Baltimore*, June, 1927.

cases resulting in conviction.¹⁴⁵ The commission was instrumental in securing the change of the Maryland constitution so as to permit the abolition of the fee system in the state attorney's office. It now publishes a quarterly bulletin of crime statistics in Baltimore. A report on the activities of professional bondsmen in the state and federal courts from October, 1926, to October, 1928, was issued recently.

Chicago. The killing of payroll messengers during a robbery in 1917 stimulated the Chicago business community to establish the Chicago Crime Commission under the sponsorship of the Chicago Association of Commerce. Beginning operation on January, 1, 1919, the commission has been in continuous existence since.¹⁴⁶ Its efforts have been centered largely upon securing the facts of crime and the operation of the courts and then throwing the white light of publicity upon them. It has published periodical bulletins and pamphlets, and has furnished up-to-the-minute crime reports to the press. Its funds for 1926 amounted to \$69,000 and for 1927, to \$95,000.¹⁴⁷ The commission seems to be enjoying increased prestige under the presidency of Mr. Frank J. Loesch, who possesses the confidence of all classes desiring law enforcement.¹⁴⁸ The Chicago Crime Commission collaborated in the publication of the reports of the Illinois Association for Criminal Justice in 1929.

Cincinnati. The Cincinnati Bureau of Municipal Research has for some time been examining into the local crime problem. Pamphlet No. 4, issued in April, 1928, claims the following results: (1) surveying the police department at the request of the city manager and submitting constructive recommendations, most of which have been adopted; (2) designing a complete police and crime record system at the request of the city; and (3) completion of a statistical analysis of the court disposition of felony arrests, at the request of the county prosecutor.¹⁴⁹ The director reported on November 7, 1928: "The final

¹⁴⁵ *Quarterly Bulletin*, Baltimore Criminal Justice Commission, quarter ending March 31, 1929.

¹⁴⁶ *Bulletin of the Chicago Crime Commission*, No. 42, Sept. 1, 1926.

¹⁴⁷ *Criminal Justice: Journal of the Chicago Crime Commission*, No. 55, February, 1928; Kenneth L. Roberts, "Watchdogs of Crime," *Saturday Evening Post*, Vol. 200, Oct. 8, 1927, pp. 45-47.

¹⁴⁸ Comment on the Chicago Crime Commission is contained in an editorial in the *New Republic*, Vol. 56, August 29, 1928, p. 36. Professor Merriam refers to the personality of Mr. Loesch in his *Chicago* (New York, 1929).

¹⁴⁹ Pamphlet No. 5, May 1928.

report of our first study in the field of criminal justice is still in course of preparation."¹⁵⁰

V. MISCELLANEOUS SURVEYS

Among a group of crime surveys with respectable findings, but with no apparent concrete results, are those made in Connecticut and Memphis by the American Institute of Criminal Law and Criminology, that conducted by the Law Association of Philadelphia, and the incomplete work of the Institute for Research in Social Science at the University of North Carolina.

Connecticut. A limited survey of the administration of justice in Hartford, New Haven, and Bridgeport, sponsored by the American Institute of Criminal Law and Criminology, was published in the *Journal of the American Institute of Criminal Law and Criminology* for November, 1926, two years after it was made. To the present time there have apparently been no legislative results.¹⁵¹

Memphis. The study of crime conditions in the city of Memphis by Professor Andrew A. Bruce and Mr. Thomas S. Fitzgerald seems to have grown out of local indignation aroused by the statement of Dr. Frederick L. Hoffman, consulting statistician of the Prudential Insurance Company of America, that Memphis had the highest homicide rate in America. After a series of recriminations, in which the people of Memphis endeavored to show Dr. Hoffman that his figures were erroneous, a crime commission of local officials was established to seek the facts in the case. The American Institute of Criminal Law and Criminology was asked to cooperate with the group in conducting a survey of existing conditions and to make feasible suggestions.¹⁵² A letter dated May 9, 1929, from Mr. Charles N. Burch, president of the Memphis and Shelby County Bar Association, states that his association studied the report and made several suggestions to the Tennessee legislature of 1929, but that no legislation resulted.

Philadelphia. The question of a crime survey in Philadelphia was discussed years ago by prominent judges and attorneys meeting with the president of the American Institute of Criminal Law and Crimi-

¹⁵⁰ Letter of that date to the writer.

¹⁵¹ Letter of October 13, 1928, from Florence L. C. Kitchell of New Haven, and of October 16, 1928, from Judge George H. Day of Hartford.

¹⁵² Bruce and Fitzgerald, "A Study of Crime in the City of Memphis, Tennessee," in *Journal of the American Institute of Criminal Law and Criminology*, Vol. 19, August, 1928, No. 2, Part 2, pp. 3-7.

nology. The judges of the court of common pleas of the city soon requested the Law Association of Philadelphia to undertake the task. After some three years of study, the report of a committee of this organization was published in 1926 as a four hundred and seventy-six page volume, under the title of *Report of the Crime Survey Committee*. It was decidedly more legal than sociological.¹⁵³ One reviewer even suggested that its conservative nature might be interpreted as a deliberate intention to whitewash.¹⁵⁴ The writer has been unable to find any appreciable results. Indeed, the Philadelphia Association of Criminal Justice has recently been organized upon the initiative of Mr. George W. Norris, governor of the Philadelphia Federal Reserve Bank. It is reported to be patterned after the Baltimore Criminal Justice Commission.¹⁵⁵ The work of the crime commission of the state of Pennsylvania is treated elsewhere in this article.

North Carolina. The Institute for Research in Social Science at the University of North Carolina is conducting a series of crime studies. Jesse F. Steiner and Roy M. Brown's *The North Carolina Chain Gang* was the only publication issued at the time when this was written (summer of 1929). Several other projects are under way and will reach publication within the next two years.

VI. CONCLUSIONS

Certain general conclusions suggest themselves as a result of the foregoing review. The first is that, speaking generally, greater immediate legislative results can be accomplished where a survey originates as an official legislative commission rather than as a voluntary organization. Of the four surveys with major results, three—in California, Michigan, and New York—fall in this category. To be sure, the Ohio code was formulated by the State Bar Association; but the idea was fostered by the previous legislature, which made provision for an official commission, only to have the measure vetoed by the governor. The second thought which suggests itself is that the surveys which have produced the best research have not uniformly produced the greatest immediate tangible results. New York may be an exception; but it should be remembered that the scholarly research of the New

¹⁵³ See the review of Francis F. Kane in *Journal of the American Institute of Criminal Law and Criminology*, Vol. 17, pp. 310-327.

¹⁵⁴ A. K. in *ibid.*, p. 160.

¹⁵⁵ *Quarterly Bulletin*, Baltimore Criminal Justice Commission, March 31, 1929, p. 2.

York Crime Commission has been conducted largely since the enactment of the Baumes laws. The research activities in Michigan, California, and Ohio were in no sense comparable with those in the Missouri and Illinois projects. This conclusion is not meant to disparage research in crime. Undoubtedly the states which did not do much themselves relied largely on the results of the Missouri and New York reports. Moreover, it is impossible to foretell what will happen in the next few years in those states which seem to have turned their backs on the disclosed facts. For instance, how much of the subsequent improvements accomplished by the Cleveland Association for Criminal Justice and the new Ohio criminal code of 1929 can be attributed to the Cleveland crime survey of 1921? Probably a very great deal. The process of securing knowledge of the criminal process is cumulative, and is progressing rapidly. The writer cannot help feeling that much has been accomplished in the last ten years by these surveys. While some have been far more productive than others in immediate tangible results, all have added to that ferment which is gradually adapting a rural, eighteenth-century criminal-justice machine to the contemporary urban and industrial age.

The foregoing review has not attempted to cover the entire field of criminal law activity. There have been numerous efforts and accomplishments in the domain of criminal procedure in many states which have not had organized surveys. Most bar associations have been actively interested in the movement.¹⁵⁶ In several states the judicial councils have applied themselves to the problem with notable results. The present article has been concerned primarily with organized crime surveys.

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¹⁵⁶ See a series of articles by Professor J. P. Chamberlain in recent issues of the *American Bar Association Journal*.

FOREIGN GOVERNMENTS AND POLITICS

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The Communist Party of the Soviet Union. A salient feature of the Soviet order set up in Russia by the Bolshevik Revolution of 1917 is the provision for a single, mobilized political center, striving to organize all social processes to conform with its particular ideology and program. The Communist party is this political center of the Soviet Union, enjoying a monopoly of legality in respect of organization. Only an outline of the methods by which this political machine exercises its leadership is possible within the limits of the present note. The emphasis will be on the structure which the Communists have given to their party, in order more effectively to carry the responsibility of leadership assumed by them. The word "party" is used, but one has here an organization which differs sharply from political parties of parliamentary systems. Also in its relations to the formal governmental bodies the Communist party presents several features which differentiate it from the party systems of other countries.

The special methods of organization adopted and the peculiar position enjoyed by the Communist party in the Soviet Union permit of several theoretical interpretations. One of these is that the Revolution contemplated by the Communists has three distinct stages, of which only the second has as yet been reached. There was the successful seizure of power, finally consolidated after some three years of civil war. Then came the present period of transition, the length of which will depend upon the success of the party in the exercise of its leadership. Only the successful achievement of the present party leadership will bring the final triumph of the Revolution as the third and last period. For the period of transition there is the "Government of Workmen and Peasants," but with a "Dictatorship of the Proletariat;" and the latter is exercised by the "Vanguard of the Workman Class" as organized in the Communist party. This combining of the most current slogans gives the shortest definition of the party in its relations to the Soviet government.

Another official Communist interpretation points out that the present period of transition is marked by the continuation of the class struggle as the basis of political leadership. To carry on this class struggle, the proletariat must continue its dictatorship beyond the point of the destruction of the former governmental authority, and its party, the Communist party, must maintain its directing or ruling position in the new form of government. The Soviet political system has also been defined as a constitutional party dictatorship. It should be noted, too, that this second period of the Revolution requires the retraining of the masses, and this in a country where the bulk of the population has had comparatively little political experience. A considerable percentage of the workmen and a larger percentage of the peasants not only are unable to read and write, but are still what the Communists designate as "politically illiterate." This situation, it is believed, calls for a carefully selected and highly centralized political leadership; and the Communist party is built up in such a way as to provide this kind of leadership.

The monopoly of legality of the Communist party guarantees its directing or ruling position not only in the Soviets but also in all elective non-party mass organizations, of which the most important are the trade unions and the coöperative societies. In all these elective bodies there are the two sharply defined groups of "party members" and "non-party elements." The non-party elements have the majority in the basic local units of Soviets, trade unions, and coöperatives. All elective institutions of the Soviet Union have a pyramid form of structure on the basis of indirect elections. The Communist party is able to secure a constantly increasing representation as one ascends from the local to the central organs of the elective mechanism. In the higher coördinating bodies the party is in undisputed control, its ruling position firmly consolidated by overwhelming majorities. The party members are the only organized group in any elective body, and under party discipline they are organized as a unit. This party "fraction," as it is called, exercises the party leadership in the particular institution, for it is under the immediate direction of the party authority for the area of jurisdiction of the institution. The Communist party is "the party," the right to use the word "party" having been monopolized.

The very structure of the party adds to the effectiveness of its monopolistic position. The primary unit is the "cell;" where there are three or more members of the party in any institution they constitute

the Communist cell of that institution. There are cells in all factories, in Red Army units, in administrative bureaus, and also in higher educational institutions. In the country districts the party group is organized to cover a township, which is the rural administrative unit composed of several villages. In round numbers there are over 40,000 of these cells, closely coördinated by committees with permanent bureaus, and all headed up in the Central Committee of the party with its Political Bureau. Frequent local conferences and annual congresses of the whole party keep the party organs in touch with one another, and in line with the policy of the party. All party organs are elective and parallel the elective organs of the Soviets, trade unions, and coöperative societies. In this way the Communists, numbering at present about a million and a half, including the candidates for membership in the party, are distributed throughout all institutions, and are under centralized direction for unified political activity.

Many governmental positions are filled by appointment, subject to confirmation, in some instances, by a "mass organization" such as a trade union. The higher, responsible posts in the Soviet apparatus of administration must be held by members of the party. This principle is accepted as following logically from the assumption of responsibility for the leadership of the Revolution by the Communists. The party control of all higher coördinating elective organs of Soviets or of trade unions makes possible the enforcement of this principle. In the event of a conflict over an appointment between the governmental authority and the trade union, for example, the party leadership in both bodies easily effects a settlement. Then, in a nationalized factory, for example, the management appointed by the governmental authority and the factory committee elected by the workmen as members of a trade union are brought into harmony by the party cell of the factory. At present it is necessary to associate with the management a large number of non-party technical experts who have come over from the old régime. Technical experts who are of workman origin and also members of the party are being produced in the Soviet schools. But until these "proletarian technical experts" and "Communist economic workers" have replaced the old-régime engineers and managers, the party cell carries a definite and heavy responsibility in any institution, whether it be a factory, an administrative bureau, or an educational establishment.

All policies are spoken of as "the policies of the party and government," and the wording corresponds to the facts of the situation.

Party congresses precede congresses of Soviets, and the resolutions of the former determine the legislation of the latter. In intervals between congresses the Central Committee of the party directs the legislative and administrative policies of the Central Executive Committee of the Soviets. Thus the formal decision to start on the introduction of the seven-hour work-day was made, in point of fact, by the party. The same was true when the price of grain was raised. This question of the relation of the party to the government presents an interesting subject for detailed study. Another illustration may be cited. When the question of the amount to be appropriated in 1928-29 for capital investment in industry was under discussion, three governmental institutions—the Supreme Soviet of National Economy, the State Planning Commission, and the Commissariat of Finance—prepared somewhat divergent figures. It was announced that the decision as to the total to be expended was made by the Central Committee of the party. The recently adopted "Five-Year Plan," which fixes in detail the economic development of the country for the period 1928-33, is essentially a party policy. Kalinin, whose position is approximately that of president of the Soviet Union, in reporting to the party conference of 1929, spoke of it as the "party plan of socialist construction," adding that it represents "the greatest good fortune that has ever fallen to the lot of revolutionaries." In the same speech, in discussing the details of the actual carrying out of the Five-Year Plan, he explained that "the Soviet apparatus of administration is the weapon for realizing the directions of the party."

This leadership by the party in the economic field is very immediate and practical. The rôle of the party cell in a given economic enterprise with respect to management and conditions of employment is an example already noted. In the rural districts the party authorities are expected to direct sowing and grain-collecting programs. The "economic difficulties" which developed in the winter of 1927-28 in connection with the grain collections were explained as due in part to the absence of proper leadership on the part of the lower, local, party bodies. The local Communists, as well as the central leaders, were distracted from their tasks in this field by the dispute over leadership and policy which was going on within the party.

This dispute within the party furnished other illustrations of the party's position with relation to the Soviet governmental system. Very early in the discussion the "opposition," led by Trotsky, was

accused of violating Soviet law as well as party regulations. One of the grounds on which Trotsky was exiled was his alleged "anti-Soviet" activity. In the last stage of his political downfall he was accused of organizing armed resistance. But earlier the basis for the charge of "anti-Soviet activity" was merely opposition to the policy of leadership of the existing Central Committee of the party. An appeal to the non-party masses against the Central Committee of the party, publication activity independent of party control, and the communication of party documents to persons outside the ranks of the party were the offenses with which Trotsky and his group were charged in the winter of 1927-28. And these activities were designated as contraventions of Soviet law as well as violations of party discipline.

To answer some of the questions raised, and in amplification of the general statements already made, the structure of the political organization called the Communist party is in point. The character of its structure has suggested the inapplicability of our term "party" to this type of organization. Its method of organization defines the relation of the party to the proletariat, contributes to the exercise of its leadership in the Soviets and other institutions of the Soviet system, and, in particular, throws light on the more formal question of the relationship between the party and the government. For in only one instance is there actual merging of government and party, i.e., where the Control Commissions of the party and the Commissariat of Workman-Peasant Inspection are formally united. In other instances one has at all stages interlocking directorates, and these assure to the party its ruling position in the Soviets and its leadership in all non-party mass organizations.

From the beginning of its history as a group within a larger organization, the Bolshevik faction of the Russian Social Democratic party, which in 1918 became the Russian Communist party and in 1923 the Communist party of the Soviet Union, this organization has practiced the policy of strict control of admission to membership. The formalities for application and admission include a record of productive or civic activity (or both), sponsorship by active members, a period of candidacy, sometimes a formal test, and always the voluntary acceptance of the obligations of membership and of party discipline. Each individual applicant is presumably carefully checked up. The class to which the applicant belongs is a matter of particular importance. The conditions of admission are more difficult for intellectuals

and office-workers, less difficult for peasants, and easiest for workmen engaged in actual production or for the agricultural laborer. Between these last two groups are the so-called "poor peasants" and the peasants who apply for membership while in active service in the Red Army. Drives for membership are exceptional. At the time of Lenin's death a special contingent of workmen was recruited into the party by an active campaign. Again on the occasion of the tenth anniversary of the Revolution there was a drive for new members. In the winter of 1928-29 a more deliberate effort to increase the number of bench-workmen and agricultural laborers was made. A re-registration of the entire membership, with a "cleansing" of the party ranks, in the summer of 1929 was also an occasion for an organized effort to bring in new members. In all these instances the basic aim was to increase the number of workmen in the membership.

Although the majority of the members, from 1918 on, have come from the class of workmen, many have been drawn into the large bureaucracies of Soviets, party, trade unions, or coöperatives, and have become "office-workers" as opposed to bench-workmen. Since the workman class in this stricter sense of the word must predominate in the party to make it in fact the "vanguard of the proletariat," it is necessary constantly to take definite measures to insure this requirement. A recent drive for membership among the agricultural laborers was a new policy, dictated by the adoption of a more active economic program of socialization of agriculture.

The requirement of sponsors is made effective by a rule that sponsors will be disciplined in the event that their candidates prove unworthy. Intellectuals require more sponsors than do peasants or workmen, and their sponsors are required to have a longer "party status" than are the sponsors for a candidate who is a workman. Also, for an intellectual, two of the five sponsors required must be bench-workmen. On the other hand, the agricultural laborer may be sponsored by the local Soviet authority. The period of candidacy before admission to full membership also varies, according to the class of applicant, from six months for the bench-workman to two years for the office-worker or technical expert.

This strict control of membership makes possible the enforcement of party discipline, and the discipline of the party over its members is a very real thing. Party discipline requires that the decisions of the higher party authorities be carried out to the letter

and promptly, either by the individual in any organization or group or by the formal "fraction" of party members in any elective institution. In its more general scope, party discipline imposes the obligation to engage in some civic activity. Greater freedom in the choice of the field of activity is now permitted, but mobilization and assignment to specific tasks is still theoretically possible and is practiced in special instances. In addition, the Communist is limited with respect to the amount of salary he may receive in an appointive position. The party member, of course, may not engage in private business for individual profit. A minimum of theoretical knowledge of party and Soviet policies is also required. Until recently, party members were assigned to various grades of special schools in fulfillment of this requirement. At present the obligation to study to become "politically literate," is not mechanically imposed except with respect to candidates as part of their preparation for admission to full membership. Party discipline extends also to the private life of the individual member, and the conception of "behavior unbecoming a Communist" has become more or less fixed. Habitual drunkenness and observance of religious rites are two very usual grounds for disciplining a party member. Flagrant abuse of the law on divorce may lead to the same thing. When common-law crimes are committed by Communists, particularly if the motive of selfish gain is present, not only does the party add its penalty to that imposed by the court, but the latter is expected to hand out the severest possible verdict because of the party affiliation of the offender.

Measures of discipline range from party censure to expulsion. The Control Commissions of the party have among their functions that of investigating individual party members, and also entire local committees, and of imposing penalties for breaches of party discipline. Elective party committees may be dissolved and their entire membership temporarily forbidden to hold responsible positions in the party. Demotion or dismissal from responsible posts in the government, a trade union, or a coöperative society always follows when the individual has been subjected to the disciplinary action of the party. The expelled member may apply again for membership, but he must go through the usual formalities, including a period of candidacy. Thus Zinoviev, after his expulsion in company with Trotsky, was readmitted to the party, but only after a period of six months from the date of his application on the basis of the abandonment of his former views and activities. Others who had sided with Trotsky in the intra-

party discussions were also readmitted after a formal recantation. Often a member guilty of violating party regulations is not expelled, but is kept in the party, so that he may be more effectively controlled under party discipline. This was the procedure with respect to Trotsky and his followers during the first stage of their dispute over the leadership of the party.

A further means of control of the membership is furnished by periodic re-registration of all members. In this way the party is "purged" of elements that have attached themselves to it for purposes of selfish gain, or have lost faith in the policies of the party or the courage to continue the constant struggle required by the program of the Revolution. The first general cleansing took place in 1921, and at that time 175,000 members, or about one-quarter of the total membership, failed to qualify and lost their party tickets. From 1922 to July 1, 1928, as a result of partial re-registrations and the daily activities of the Control Commissions, 265,000 members either failed at the re-registration or were positively excluded from the ranks. During this same period the membership increased by the admission of new applicants from 600,000 to over a million and a quarter. In view of the development of "deviations from the party line" during the last year, a complete checking up on all members and a general "cleansing" was voted. This recent cleansing, which was begun on May 15 of this year and was due to be completed by October 15, is the most thorough re-registration that the party has known.

The first aim of this most recent cleansing was to "free the ranks of the party of elements of disintegration, of ballast, and of opportunistic degeneration." The effort had a "healthy influence" on many Communists, making them "give answer to the whole mass of the people, confessing before it all their sins." It also taught workmen and peasants "how to understand, carry out, and defend the general line of the party." Thus—so it is reported—the questions of industrialization and collectivization, of class struggle in the conditions of socialistic constructive effort, of the need of a more determined advance against the new bourgeois elements and the rich peasants have become much clearer to the non-party masses. The cleansing also is expected to induce many non-party workmen to join the party, since they see that the re-registration has removed those elements which had estranged them from it. Often the cleansing process failed to remedy the conditions in a local committee which were considered unsatisfac-

tory by the party leaders. Wide publicity was given to such instances, and the local party body was again checked up and cleansed.

The procedure of the most recent cleansing was carefully organized. First, the higher party organs were checked up by specially selected "commissions of three," composed always of "old Bolshevik guard" members who had joined the party in pre-revolutionary days. Then these higher party organs proceeded to check up on the cells in administrative institutions. Here the party members are believed to be particularly exposed to bourgeois influences, from the technical experts and non-proletarian elements who have found clerical work in the enormous bureaucracy of the Soviet system. Next, the rural cells were cleansed. Here also the party members are "in an encirclement of petty-bourgeois elements," as represented by the twenty-seven million individual peasant households. There are only 311,000 rural Communists, and many of these were found to have come under the influence of the richer elements and the small traders among the peasants, favoring these "class enemies" in sharp contradiction to the "party line." Only a very small percentage of the rural party members, it was found, had entered the collective farms. The "industrial cells," i.e., those in large factories, were covered as the last stage of the process of cleansing. Members of these groups, it was believed, would show less "deviation from the general party line," with its emphasis on the dictatorship of the proletariat in the political field, and on the rapid industrialization of the country in the economic realm.

The instructions for the cleansing provide that in every cell each individual member must be discussed in an open meeting of the local organization, to which non-party workmen and peasants have been invited. The report of the general group on the activity of the Communist under examination is taken into consideration by the investigating commission, although the commission is not bound by the opinion expressed. There is no formal voting in the open meeting, but the commission gives its motivated decision to the assembly. Hostile elements—the disfranchised private trader, the rich peasant, or the churchman—are not to be admitted to these meetings. The political attitude of the individual is the main point on which there is checking up, and the instructions forbid delving into the private life of the party member. However, observance of religious rites and habitual drunkenness are sufficient basis for exclusion, as well as rowdiness,

commanding methods of leadership, and "deviation from the party line."

A non-political attitude on the part of a party member is a serious departure from the "party line." It has been in the party cells of Soviet governmental bodies that this non-political attitude has been noted. Here it has been found that "narrowly practical questions have been discussed to the exclusion of questions of general policy," with the result that "the class line is not properly emphasized in the work of the institution." The Communists have shown the greatest contempt for the individual or group that lacks class consciousness and simply wants to work and live regardless of the class struggle of the period of the Revolution. The term applied to this element may be approximately rendered by the expression "mere inhabitant." Recently this term has been applied also to party members who have shown a lack of enthusiasm for the struggle, so that the paradoxical combination "party-member mere-inhabitant" has enriched the Soviet political vocabulary.

On the eve of the cleansing recently completed, the total membership of the party, including candidates, was 1,529,280, as reported by the statistical department of the Central Committee of the party. Of these, 60.6 per cent were of workman origin, although only 41.5 per cent were actually engaged in manual work in factories, on railways, as agricultural laborers, or as janitors of industrial enterprises, and 21.5 per cent were peasants by origin, although only 9.8 per cent were occupied exclusively with agriculture. The analysis on the basis of present occupation showed that office-workers, students, and "others" (the last category presumably including the group of technical experts) totaled 40 per cent of the membership, although on the basis of class origin this group was only 28.5 per cent of the total. During 1928 the membership increased 17.2 per cent, by the admission of 224,909 members. During the months of January to March, 1929, 105,000 new members were admitted. Of these new recruits, 83.2 per cent were workmen and agricultural laborers, 10.9 per cent were peasants, and only 6.9 per cent were office-workers. On the basis of preliminary reports, it was estimated by the party secretariat that the cleansing would exclude about 10 per cent of the total membership, or, in round numbers, about 150,000.

The general principle of the internal organization of the party is designated as that of "democratic centralism." All units, from bureaus of local cells to the political bureau of the Central Committee, are

elective. But a lower unit is subject to the "directions" of the next higher unit, and the Control Commissions, local and central, periodically inspect to see that these directions are followed. Thus, it is explained, there is "intra-party democracy," while at the same time adequate provision is made for the degree of central direction necessary to insure discipline and unity in the party. Another factor making for intra-party democracy is the practice of "self-criticism" which is being promoted. Self-criticism has been put on a more organized basis to meet complaints of the growth of bureaucratic tendencies within the party. It is too early to determine to what extent this practice is functioning effectively. The instances noted in the Communist press where it has proved a fictitious right of the lower ranks of party membership cannot serve as a basis for generalization. These instances are widely discussed as part of the effort to develop the practice within the party membership. During the last year several important local organs were found to have got completely out of hand, recognizing no responsibility to the local group and escaping all control from above. Democratic centralism had failed completely. A drastic surgical operation was performed in each case. The official explanation of these instances of failure of intra-party democracy is that they result from the "right" deviations in the party ranks, while opponents insist that they are inherent in the monopoly of legality of the party.

A third factor making for intra-party democracy is the organization of discussion of party policy. It is correct to speak of it as the organization of discussion, for without control of discussion it would be impossible to enforce party discipline and maintain party unity. In preparation for a party congress the agenda are submitted to the membership for discussion locally. But it is the discussion of the resolutions adopted by a congress, or even by the central committee of the party between congresses, that is systematically organized. Local committees, and even the primary cells, are expected to study these resolutions, in order more effectively to carry out the policies which the resolutions establish. After the adoption of a policy by the higher authorities of the party, the question is no longer open to debate. It was for insisting on further discussion of policies voted by a party congress that Trotsky was accused of promoting "factionalism;" and the forming of factions within the party is one of the most flagrant violations of party discipline. For the Communist party, in order to be "the one and only" political organization of the Soviet order, must also be "one and united." This is the most positive of the many precepts

left by Lenin to the party which acknowledges him as its founder and authority.

The maintenance of unity within the party was one of Lenin's outstanding accomplishments as a leader. During the pre-revolutionary period of underground activity, and even during the first revolutionary years of militant communism and civil war, the task of keeping the party a unit was comparatively easy. But already before Lenin's death, as a result of the New Economic Policy and of the conditions which developed from the strategic retreat which this policy represented, it became more difficult to maintain unity in the party ranks. The present leadership of the party, while insisting that it is a unit in the matter of policy, is forced to combat a "right" tendency as well as the remnants of the "left" deviation started by Trotsky. Trotskyism is designated as a "left" tendency always in quotations, being considered by the leaders in power as a perversion of Lenin's Bolshevism. The presence of capitalistic elements in the economic life of the country—private industry and trade, individual peasant enterprises, and technical experts trained under the old régime—furnishes the soil, it is explained, for both these ideological deviations. Any political concessions to these tendencies which would weaken the monopoly of legality of the party, either directly by permitting other political organizations, or indirectly by allowing factions within the nominally single party, would, it is insisted, be treason to the principles of the Revolution. And so positive was Lenin's position on this point of the monopoly of legality of the Communist party in the Soviet system that, in theory, this view is accepted by all groups which have been involved in the recent dispute.

The contact of the party with the masses is in and through the Soviets, trade unions, coöperative societies, and other so-called "non-party mass institutions." The party leadership is expected constantly to report to its constituency, particularly at the time of the annual elections. "Reporting" is also the procedure at many of the regular sessions of these institutions and their elected organs. In this way the party leadership is exercised; the political line of the party is influenced by these constant contacts, and at the same time it is enforced on the masses. "Soviet democracy" is developing, it is explained, in measure as the party brings the masses into effective activity, always in conformity with the "party line." This leadership must not be that of the "drill sergeant," and on the other hand the Communist group in any

institution or organization must not "drift with the current," or "tag along." Just where lies the happy medium, and how often it is actually attained, is the subject of constant concern and discussion. Individual members and entire local groups have been disciplined for "commanding" methods of leadership, on the ground that their methods discredited the Soviet authority as well as the party. Others have been called to account for failure to be the active and energetic leaders in their group or community. It has been suggested that party workers in central party organs be regularly assigned to local groups for short periods each year, in order better to learn the problems and methods of local leadership.

A whole network of formal educational establishments have been instituted to train the party membership. In these party schools, universities, institutes, and academies the secretaries of local Soviets receive practical training in leadership, or the leaders of the party work out the theory of Leninism, which is the basis of the "party line." During the first years of the Revolution all members were assigned to these schools; there was obligatory party education. The insistence on training in the principles of the party was one of the sources of its strength. Agitation and propaganda constituted the great need during the first years, and the party educational institutions were adequate for that purpose. The demand of the party membership for a broader and more fundamental education recently brought about a crisis in the party schools, with a resulting modification of the former practice of mechanical assignment. But though less specific and less rigorously applied, the obligation to study and train for leadership is still one of the duties which the individual assumes when applying for membership in the party.

Less formal methods of training for leadership have been adopted. In the workmen's clubs and village reading-rooms there are "circles" which devote themselves to the study of problems of practical politics. The interesting institution of workman-correspondent or peasant-correspondent represents another channel of training; a considerable percentage of these non-professional contributors to the newspapers of the party are party members. The very informal wall-newspapers which are found in all institutions supply another field in which party members acquire training for and practice in leadership. Trade-union activity and participation in the work of the local coöperative society are considered training for more specifically political leadership. At

the same time, the obligation of civic activity which is imposed on all party members may be worked off by any of these forms of activity, which are organized also as part of the training in leadership.

Preparation for membership in the party is one of the functions of the Communist Union of Youth. This organization of young people between the ages of fourteen and twenty-three, numbering over two million, is under the direct leadership of the party. The activities and duties imposed on these youths prepare them to meet the requirements for membership in the party. Under the age of twenty-one, all applicants for admission to the party must be members of this organization of youth, with the training which such membership has supplied. The older elements of the Communist Union of Youth participate directly in Soviet, trade-union, or coöperative work, their "cell" in a factory or their "fraction" in a Soviet or other elective body forming a unit with the corresponding party cell or fraction. A Communist movement among children has brought into formal organization some two million "Pioneers of Communism." These selected groups of children, ranging from ten to sixteen years of age, are under the leadership of the Communist Union of Youth, and are being trained to join the latter, and ultimately also the party.

The special "political courses" in the Red Army have among their several aims that of selecting and preparing young men in military service for membership in the party. The network of party cells extends also to the regiment barracks, and a large number of young workmen and peasants are brought into the ranks of the party during the period of their training in the Red Army. The party also has instituted Conferences of Women Delegates among the women of the workman and peasant classes. These Conferences have a broad program of political education to bring the women into public life and activity. By participation in the work of the Conferences, many women acquire the qualifications and training deemed necessary for admission to the party.

The Communist party is an "All-Union" organization, crossing the lines which have been drawn by the federal structure of the Soviet Union. There is, for example, the Communist party of the Ukraine, and the party organization of an autonomous unit also carries the name of the national minority which enjoys an autonomous status. But these local "national" sections of the single All-Union Communist party have the same relation to the central party authorities as do local organs of a purely administrative area. It is only the size of the party

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organ corresponding to the territory of the Ukraine that makes it one of the more important of the local party units. The principle of unity demands this subordination of the factor of nationality in the structure of the party.

On the same principle, the Communist party of the Soviet Union is itself not a national party, but only a section of the Communist International, theoretically subordinate to this body. The position of the party with respect to the Communist International, and the resulting relationship between this international body and the Soviet government, has been one of the points in dispute between Moscow and the governments of other countries, and requires independent discussion. This outline has confined itself to the subject of the structure and rôle of the Communist party within the Soviet Union. However, it should be noted, for example, that the recent cleansing of the party was undertaken under an article of the formal conditions of membership in the Communist International, this fact being constantly emphasized in the decisions and instructions in connection with the cleansing of the party ranks. As a matter of practical politics, the Soviet Union Communist party is the force and authority in the Communist International, being the only section that has effectuated the program of the Revolution and established itself as the ruling party of a Soviet system. The theory, however, must be borne in mind, even though it does not influence practically the principles or structure of the party or its position with respect to the various institutions of the Soviet system.

Within the Soviet Union, therefore, on the basis of its monopoly of political organization, the Communist party has assumed sole responsibility for leadership. This assumption of responsibility, coupled with the specific aims of the leadership, has demanded a strict control of membership. Further, the membership is being constantly trained for the exercise of this leadership, and selection is being made from the younger generations to train up the "reserves" for the present leadership. The structure of the party, with its cells, fractions, local and central committees, conferences and congresses, and its Political Bureau and Control Commissions, gives the million and a half members and candidates for membership direct contact with all groups and all activity, for the double purpose of registering the demands of the masses and directing their activities. The ultimate aim of the party is to bring into its ranks the majority of the workman class. After twelve

years of the Dictatorship of the Proletariat, this aim has not been attained. It is believed that the recent cleansing of the party ranks will attract new members from among the workmen. But Lenin's policy of "quality rather than quantity" in this matter of formal membership in the party is being continued. At the same time, all opposition of an organized character, outside or within the party, is suppressed with the same vigor that marked the suppression of opposition in the first years of the Revolution. The oft-reiterated statement that the Soviet order is absolutely dependent on the maintenance of the "oneness" and unity of the Communist party has the ring of a campaign slogan. But in the conditions of a period of revolution, with the constant harping on the menace of "counter-revolution," this statement has come to represent a basic principle of a political system.

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NOTES ON INTERNATIONAL AFFAIRS

The Personnel of International Administration. International administration assumes the establishment and maintenance of staffs of subordinate officials and employees, comparable to the civil service personnel of individual countries. In general, the international service is somewhat less systematized than the national services of the more progressive states, chiefly on account of the multiplicity of existing organs, each maintaining its separate staff. It is in the League of Nations, including the International Labor Organization, that the greatest amount of order and system will be found. Other international organizations do not have the same need of comprehensive methods of dealing with personnel problems, since the number of their employees is comparatively small.

The Use of National Officers in the Administration of International Conventions. The administration of the majority of international conventions falls entirely within the province of the regular national agents. In some instances particular mention is made of the officials who are expected to collaborate in carrying the provisions of an agreement into effect.¹ The convention of 1921 dealing with the metric union refers to the director of the archives of France in connection with the deposit of prototypes.² Where the national officials are not mentioned by a treaty, it is properly assumed that they will apply its provisions, just as local courts will adjudicate in relation to the document. For example, the Convention for the Regulation of Aërial Navigation of 1919 describes the registration of aircraft and the issuance of certificates of air-worthiness by signatory states, without designating the local authorities who are expected to act, and plainly assumes that such authorities will be governed under the municipal

¹ This is generally true of extradition conventions which refer to "judges," "magistrates," "officers of the surrendering government," "legal officers of the state where proceedings are had," and in other terminology make mention of the regular officers of the states concerned. See United States treaties with Costa Rica (1922), Venezuela (1922), Siam (1922), Latvia (1903), in *Treaty Series* (U. S.), Nos. 668, 675, 681, 677.

² *Treaties, Conventions, International Acts, Protocols and Agreements between the United States and Other Powers*, Vol. 3, p. 3088.

law of the respective countries.³ Even when special international administrative bodies are created by treaties, reliance may also be placed upon national agencies. The postal officials of a state having membership in the Universal Postal Union, for instance, are expected to apply the rules prescribed by the convention of the organization.

The international significance of certain national administrative acts is so real and apparent that they have been referred to by one author as a form of international administration. Mr. C. Delisle Burns has commented as follows with regard to the matter: ". . . . a village postman of England or France [members of the Universal Postal Union], delivering a letter with a foreign stamp, is acting as an international official.' That is a form of international administration, but in this form the states, as it were, themselves act as agents or instruments of an international 'will.' The village postman, although acting directly under orders from his own government, is indirectly serving the authority whose direction his government has agreed to follow, and he is certainly acting for the benefit of citizens of other states whose stamps are on the letters. Sovereign power begins in such a system to interpenetrate other sovereignties."⁴

It is, however, both confusing and illogical to describe such activities as international administration. In no sense has the agent himself been divested of his national character. If he is applying an international rule, he is doing so under the constitutional and statutory provisions of his native state, under state maintenance, direction, and responsibility. To assert that the state itself is transformed into an "instrument of international will," or into an organ of international administration, is only another way of saying that the administration itself is national. The essential fact is that the administrative actions themselves are taken by officials of a purely national status, and that, apart from the states by which they are employed, these officials have no standing whatever.

³ *Treaties, Conventions, etc.*, Vol. 3, p. 3774. Attention may be called to the fact also that most of the conventions drafted under the auspices of the League of Nations rely entirely upon national application. See *British and Foreign State Papers*, Vol. 116, pp. 517, 527; Vol. 119, pp. 568, 523, 548, for conventions dealing with navigable waterways, freedom of transit, maritime ports, railways, and the transmission of electric power, respectively.

⁴ "International Administration," in *British Yearbook of International Law* (1926), pp. 58-59.

It is frequently true that the national officers designated to administer international rules are specially created for that purpose, and therefore do not belong to the regular staff of governmental agents. The treaty of Versailles provides that each of the high contracting parties shall "establish a clearing office for the collection and payment of enemy debts."⁵ Similar articles are found in the treaty of St. Germain and the treaty of the Trianon.⁶ A treaty formed in 1922-23 at the Conference on Central American Affairs calls for the creation, within each signatory state, of two commissions to study questions of finance and means of communication.⁷ It would be possible to cite numerous cases in which special national machinery has been necessitated by international treaties.⁸ From the point of view of international organization, there is no difference between the activities of special and of regular agents of states.

Particular attention should be directed to the mandate system from the angle of administrative personnel. It is essential to the mandate principle that the actual operation of government within backward areas shall be under the "tutelage" of advanced nations which are considered to be fitted to undertake such a task, with the understanding that the mandatory powers shall be responsible to the League of Nations for the manner in which they exercise their authority. The degree of authority and administration which a mandatory state possesses in a given case is defined by the Council of the League, with due regard to the distinctions drawn in the Covenant between A, B, and C mandates, and in practice, on the basis of prior negotiations with the mandatory nations.⁹ The personnel of the government of a backward area is composed of natives and officials of the mandatory, all of whom are, in varying degrees, under the direction of the government which is acting in the rôle of mandatory.

⁵ Treaty of Versailles, Part X, Section III, Annex. See *British and Foreign State Papers*. Vol. 112, p. 142.

⁶ *Ibid.*, Vol. 112, p. 428, and Vol. 113, p. 580.

⁷ *Conference on Central American Affairs, 1922-23* (Washington, 1923), p. 345.

⁸ For further illustrations, see Sir A. Oakes and R. B. Mowat, *The Great European Treaties of the Nineteenth Century*, pp. 55-56; *Treaties, Conventions, etc.*, Vol. 2, pp. 1960, 2417, and Vol. 3, p. 2959.

⁹ The texts of these mandates as defined by the Council of the League of Nations may be found in *American Journal of International Law*, Special Supplement, Vol. 17.

An arrangement of this nature is clearly another instance of the use of national agents for the administration of an international pact. There is no international control of the personnel in charge of a mandated region except through the medium of the states by which they were chosen and under whose direction they act. In practice, complaints lodged with the Council have involved later negotiations with the mandatory state without direct communication with the officials themselves. The essential distinction between the use of national agents for the application of ordinary treaties and their employment in the mandate system is that in the latter case the states which the agents serve have accepted in the Covenant certain supervisory duties of the Council of the League of Nations which may act as limitations upon their own individual actions or policies.

The Increase of International Administrative Personnel. International agents of administration are indicative of the attainment of a higher degree of internationalism than is possible with national administration of pacts. They imply a definite relinquishment of state control within a given field, however broad or narrow it may be. More important from a practical standpoint is the fact that the employment of international administrative agencies produces a greater uniformity of methods and results among the nations concerned than can be obtained by separate states acting independently.

It is therefore significant that organs of international administration are coming to be relied upon increasingly. They were first used in connection with the arrangements made throughout the nineteenth century for the internationalization of rivers, and in the machinery of public bureaus and commissions created to deal with economic and social matters.¹⁰ More recently, the League of Nations and the International Labor Organization have found it desirable to make use of international officials. The Secretariat of the League comprises within its eleven sections approximately six hundred persons, and the Labor Office has over three hundred and fifty, grouped into three divisions.¹¹ The rapid increase in the size of the Secretariat before 1927 may be seen from the following table:¹²

¹⁰ See F. B. Sayre, *Experiments in International Administration* (N. Y., 1919).

¹¹ *Official Journal*: 9th Year, No. 11 (Nov., 1928), Budget for 1929, pp. 1859, 1877.

¹² C. Howard-Ellis, *The Origin, Structure, and Working of the League of Nations* (Boston and N. Y., 1928).

Year	Total	Permanent Staff	On Probation	Temporary Officials
1920	183	183	—	—
1921	347	285	—	31
1922	368	296	17	23
1923	386	268	39	40
1924	424	295	45	48
1925	442	288	69	47
1926	467	322	34	68

With reference to personnel, international administrative agencies may be divided into two categories. In the first place, there are organs which are composed of appointees of an international official or group, as in the case of the Secretariat of the League of Nations and the Labor Office. The individual officers under such an arrangement are entirely free from state control, and consequently are thoroughly international in character. Secondly, there are agencies which are themselves international, even though they are made up of individuals selected by member states on the basis of representation. The Straits Commission and the two Danube Commissions are filled by appointees of participating states.¹³ An analogy appears between international administrative bodies of this character and international conferences, which in a similar way are made up of national officials.

In numerous instances, international administrative organs which are themselves formed of agents retaining their state character employ a number of subordinate employees in distinctly international capacities. Article 27 of the Danube Convention of 1921 contains the following stipulation: "To carry out the task confided to it by the terms of the present convention, the International Commission shall establish such administrative, sanitary, and financial services as may be considered necessary. The Commission shall appoint and pay the personnel of these services and define their duties."¹⁴ Following this statement, there is a list of the specific services which may be created by the International Commission. The German Reparations Commis-

¹³ See Convention Relating to the Régime of the Straits (1923), in L. Martin, *Treaties of Peace*, Vol. 2, p. 1032; and Definitive Statutes of the Danube, in *British and Foreign State Papers*, Vol. 114, p. 535.

¹⁴ *American Journal of International Law*, Supplement, Vol. 17, p. 21.

sion, by the treaty of Versailles, is "authorized to appoint all necessary officers, agents, and employees who may be required for the execution of its functions, and to fix their remuneration."¹⁵ Stipulations of this type are quite common in connection with the larger and more important international commissions.¹⁶

In several cases where the commission is formed by national appointment, the significance of that method is lessened by the fact that the persons who compose it are technicians, and that, therefore, their control by the states from which they are selected has little or no relation to diplomacy. Under the Sanitary Convention of 1903, the Superior Board of Health of Constantinople was composed of delegates of the participating states who were "physicians holding regular diplomas from a European faculty of medicine."¹⁷ Even where the convention does not necessitate the appointment of experts, the nature of the work to be done may be such as to require, or at least to suggest, the practice.

Administrative Staffs of Independent Commissions. In the case of independent commissions requiring the services of subordinate administrative staffs, it is customary to provide in the conventions creating the organs that they may formulate their own personnel rules. The various services of the Elbe River Commission are governed by the following article of the convention of 1922: "A secretariat shall be set up at the seat of the Commission, comprising a secretary-general and an assistant secretary-general, aided by the necessary staff. The members of the secretariat shall be appointed, paid, and dismissed by the Commission. The secretary-general and the assistant secretary-general shall be chosen by the unanimous vote of the Commission. They may not belong to the same nationality."¹⁸

Similarly, the Sanitary Convention of 1903 allowed the Superior Board of Health at Constantinople to provide for corps of physicians, disinfectors, and skilled mechanics.¹⁹ Other commissions whose activ-

¹⁵ *British and Foreign State Papers*, Vol. 112, p. 110. Treaty of Versailles, Part 8, Sect. 1, Annex 2.

¹⁶ *British and Foreign State Papers*, Vol. 112, p. 37, in regard to the Saar Basin Commission; and *American Journal of International Law*, Supplement, Vol. 17, p. 229, for a similar provision relative to the Elbe River Commission, as defined by the convention of 1922.

¹⁷ *Treaties, Conventions, etc.*, Vol. 2, p. 2104.

¹⁸ *American Journal of International Law*, Supplement, Vol. 17, p. 229, art. 7 of the convention.

¹⁹ *Treaties, Conventions, etc.*, Vol. 2, p. 2104, art. 172.

ities justify an arrangement of this nature, such as the International Commission for the Danube and the Saar Basin Commission, are generally empowered to fix their own personnel regulations. In some instances, however, this authority is subject to limitations, particularly with reference to the nationality of the employees, as in the instance of the Elbe River Commission, cited above. As a result of the extensive control permitted to administrative commissions in regard to their subordinate personnel, it follows that there is no uniformity among the rules in vogue. Generally there is no formal adoption of regulations, and consequently the employment of minor officials is on a personal basis.

The exercise of the right commonly given to important commissions to deal as they will with personnel matters has been the subject of particular controversy in the case of the Saar Basin Commission. By the treaty of Versailles, the commission is allowed to have "all powers of government hitherto belonging to the German Empire, Prussia, or Bavaria, including the appointment and dismissal of officers, and the creation of such administrative and representative bodies as it may deem necessary."²⁰ It is alleged that in practice native officers have been arbitrarily evicted from office and persons of French nationality put in their places.²¹ In its reports the commission admits the existence of some dissatisfaction with its policies, but claims to have removed only "those individuals who, by their ill-will or by their hostility to the new régime, will be likely to paralyze its actions or to compromise its work."²² The local conditions in the Saar Basin are especially fitted to produce discord over such an issue as the selection of personnel.

Administrative Personnel of Public International Unions. The administrative work of public international unions is done chiefly through the instrumentality of bureaus or central offices. The bureau has been referred to as "the connecting link between the various national administrations."²³ It is the personnel of such organs that carries out the specific administrative activities described in the *règlements*. The commissions which have been created in connection with a large num-

²⁰ *British and Foreign State Papers*, Vol. 112, p. 37.

²¹ S. Osborne, *The Saar Question* (London, 1923), p. 168.

²² For the first report of the Saar Basin Commission, see *British and Foreign State Papers*, Vol. 112, p. 208. Other reports are given verbatim in the same volume.

²³ P. S. Reinsch, *Public International Unions* (Boston, 1911), p. 155.

ber of unions do, however, participate quite directly in administrative work through their control of the bureaus, and because of the function frequently given them of issuing administrative regulations.²⁴ In the International Sugar Union the commission assumed a still more active administrative rôle.²⁵

The personnel of the commissions of the public international unions is composed in three ways.²⁶ In some unions it is made up of representatives of all member states, as in the case of the Pan American Union and the International Institute of Agriculture.²⁷ Where this is true, the manner of selection and the tenure are solely matters of individual state action. In other unions the commissions are elected by the conferences, and may or may not contain representatives of all the signatories. In the Geodetic Union, the commission is made up of two ex-officio members and nine others selected by the conference. When the personnel is selected by conference of the signatories, they individually assume an international character, on account of the fact that tenure, compensation, and direction are entirely international.

The bureaus of existing unions are generally not large in personnel. The staff of the bureau of the Universal Postal Union consists of nine persons: a director, a vice-director, two secretaries, an assistant-secretary, a registrar, a clerk, an assistant clerk, and a typist.²⁸ The Pan American bureau at Washington includes sixteen persons,²⁹ though in addition to the staff there are employees in sufficient number to bring the personnel to a total of nearly one hundred. The International Institute of Agriculture is unusual in the large size of its personnel.³⁰

²⁴ Reinsch, *Public International Unions*, p. 153.

²⁵ *Ibid.*, p. 49.

²⁶ *Ibid.*, p. 154.

²⁷ For the convention of the Pan American Union, adopted in 1928, see J. B. Scott, "The Sixth International Conference of American States," in *International Conventions*, No. 241, p. 344. For the convention of the International Institute of Agriculture, see *Treaties, Conventions, etc.*, Vol. 2, p. 2141.

²⁸ J. F. Sly, "The Genesis of the Universal Postal Union," *International Conciliation*, No. 233 (Oct., 1927), p. 57.

²⁹ *Congressional Directory*, 70th Congress, 2nd Session (Jan. 1929), p. 320. They include the following: director-general, assistant director, counselor, foreign trade adviser, chief clerk, chief statistician, chief accountant, librarian, managing editor, two Spanish translators, Portuguese translator, chief mail clerk, secretary, chief of division of education, chief of division of finance.

³⁰ *Annuaire de la Vie Internationale* (Brussels, 1912), pp. 417, 425-426. In 1912 the Institute was composed of four services, which included staff members of eight defined grades, in addition to a number of employees.

The staff of the Pan American Sanitary Bureau comprises eight officials, besides the subordinate employees.³¹ The ordinary public union, however, maintains a bureau of smaller proportions, generally with a staff of fewer than six persons. The bureau of the Union for the Protection of Industrial Property, for instance, is made up of five staff members.³²

The staff officers of the bureaus are usually appointed by the committees or commissions of the unions. The permanent committee of the International Institute of Agriculture is empowered to "appoint and remove the officials and employees of its office."³³ In some instances there is more specific enumeration of the officials to compose the bureaus whose appointment comes within the authority of the commission. Article 7 of the convention creating the Bureau of Weights and Measures states that the committee shall choose "a director, two assistants, and the necessary number of employees."³⁴ Where there is no commission in the union, it is customary to allow the state in which the bureau is placed to select the personnel. The ministry of foreign affairs for Belgium is empowered to employ and discharge the members of the bureau of the Union for the Publication of Customs Tariffs, located at Brussels.³⁵

The employees of existing bureaus who are not staff members are governed in various ways. When the organ is placed under the control of a national government, that government may issue regulations concerning the recruitment, pay, and duties of the subordinates to be employed, or may deal with the matter in any other convenient way.³⁶ National regulations, when formulated, may require the consent of all contracting states.³⁷ In some unions it is customary for the permanent commission to make regulations relative to the subordinate

³¹ *Congressional Directory*, 70th Congress, 2nd Session, p. 335. They include: honorary director, director, assistant director, vice director, secretary, scientific editor, and two travelling representatives.

³² *Handbook of International Organizations* (Geneva, 1925), p. 79.

³³ Art. 8 of the Convention of 1905. See R. L. Bridgman, *The First Book of World Law* (Boston, 1911), p. 249.

³⁴ *Ibid.*, p. 258.

³⁵ *Treaties, Conventions, etc.* Vol. 2, p. 1997.

³⁶ *Annuaire de la Vie Internationale* (1912), p. 222. The Belgian government, for instance, follows the practice of issuing regulations in regard to the bureau of the Union for the Publication of Customs Duties.

³⁷ *Ibid.*, p. 542. This is true in the Union for the Protection of Industrial Property.

personnel. The employees of the International Institute of Agriculture are governed by a very detailed set of rules, adopted by the permanent committee of the organization, which provide for recruitment by examination, a salary scale, advancement, and discipline.³⁸ The Pan American Union has no published regulations of this nature, but it emphasizes special fitness for the work which members of its staff undertake. It is the practice of this organization to employ persons of from eight to ten different nationalities, so that, from time to time, the nationals of all of the states which are members will occupy positions. The ordinary public union is somewhat less circumspect in this regard, though adherence to the idea is not infrequent.

Administrative Personnel of the League of Nations. At the Paris Conference of 1919, two theories in regard to the composition of the Secretariat of the League were propounded.³⁹ One element held that the staff should be made up of separate national delegations under state maintenance and control, with the understanding that the primary function of the Secretary-General would be to coördinate the work of the national groups. A second element advocated that the Secretariat constitute an international civil service, entirely divorced from the national services. Under this scheme, the personnel would be under the control of the Secretary-General, and remuneration would be from the general funds of the League. Sir Eric Drummond, who later became the first Secretary-General, persuaded the organizing committee set up by the Conference to adopt the plan of an international service. His attitude has been expressed as follows: "The old system had not given altogether satisfactory results; and when the members of a committee set up by the Plenary Peace Conference met to consider the matter of organization, I strongly urged that the second plan should be adopted . . . , we maintained that the execution of decisions should be entrusted to people who, being servants of all the states members of the League, could be relied upon to carry them out with complete freedom from national bias."⁴⁰

While, however, the personnel of the Secretariat of the League of Nations and of the International Labor Office is on an international basis, so far as appointment, tenure, supervision, and responsibility are concerned, it has been observed that the individual members do

³⁸ *Annuaire de la Vie Internationale*, p. 28.

³⁹ C. Howard-Ellis, *op. cit.*, p. 171.

⁴⁰ Sir E. Drummond, in *The World Today* (March, 1924).

not lose all sense of nationality or become unaware of the interests of their respective states.⁴¹ In fact, it is not desirable that nationalism be entirely extinguished in such organizations. It is one of the possible contributions of an organ such as the Secretariat that, in advancing the interests of internationalism, it may "interpret the mind of one nation to the others."⁴² By so doing, it may lay the foundation of later actions to be taken within the conferences or commissions of the League.

On the other hand, it is clear that too much emphasis upon nationality among the members of an international service would prove highly undesirable. The result would be to stimulate rather than to allay national antipathies. It is, therefore, of paramount importance to the success of an organ composed of internationalized officials that they shall be persons able to maintain a middle course between extreme nationality and complete denationalization. In the Fourth Committee the opinion was expressed in 1928 that the atmosphere of the Secretariat was not as firmly international as it had been in the beginning.⁴³ The Secretary-General was, however, of the contrary opinion. As a result of the discussion, a resolution was adopted reaffirming the principles adopted in 1921 relative to the personnel of the Secretariat.⁴⁴

The present personnel of the Secretariat of the League comprises persons from approximately fifty states, and that of the International Labor Office is made up of about thirty nationalities.⁴⁵ The higher offices are reasonably well distributed among the nationals of member states. Among the inferior posts, however, English, French, and Swiss nationals are more numerous than those of other states, on account of the advantage of having employees able to use official languages of the League, and also the availability of such persons, particularly the Swiss, within the environs of Geneva. The existing distribution of positions

⁴¹ C. D. Burns, "International Administration," *British Yearbook of International Law* (1926), p. 67.

⁴² *Ibid.*

⁴³ Budget for the Eleventh Financial Year. *Official Journal*, 9th Year, No. 11, p. 1777.

⁴⁴ *Ibid.*, p. 1778.

⁴⁵ *Official Journal*, 9th year, No. 11. Budget for 1929, pp. 1857-85. A list of officials and employees is given, together with their nationalities. After the admission of Germany to the League the Secretary-General announced the desirability of filling certain new posts to be created with Germans. See *Official Journal*, Special Supplement No. 42, p. 73.

in the main sections of the Secretariat according to nationality is indicated in the table below.⁴⁶

The manner of choosing the personnel of the Secretariat is covered in Article 6 of the Covenant as follows: "The permanent Secretariat shall be established at the seat of the League. The Secretariat shall comprise a Secretary-General and such secretaries and staff as may be required. The first Secretary-General shall be the person named in the Annex; thereafter the Secretary-General shall be appointed by the Council with the approval of the majority of the Assembly. The secretaries and staff of the Secretariat shall be appointed by the Secretary-General with the approval of the Council."

Articles 394 and 395 of Part XIII of the Versailles treaty stipulated that the Director of the International Labor Office shall be selected by the Governing Body, and that the staff shall be appointed by the Director, "who shall, so far as is possible with due regard to the efficiency of the work of the Office, select persons of different nationalities."

In the early period of the League's existence the staffs of the Secretariat and Labor Office were recruited by individual selection by the Secretary-General and Director, respectively, or by principal officers acting under their authority. In 1921 a special committee of experts reported to the Second Assembly that "this system of recruiting, which was the only possible one in the initial period, must be replaced, as a general rule to be departed from in very special cases, where the necessity for such departure can be established, by that of

⁴⁶ Branch of Secretariat	British	French	Swiss	Ital- ian	Japan- ese	Ger- man	Dan- ish	Bel- gian	Ameri- can	Others
General Organization	25	18	9	11	4	10	1	3	1	29
Central Services	37	21	61	4	0	0	1	3	1	16
Précis—Writing Dept.	4	5	0	0	0	0	0	0	0	1
Personnel Office	3	1	4	0	0	0	0	0	0	0
Printing and Publications	7	5	8	0	0	1	0	1	0	2
Library	1	0	6	0	0	1	0	0	1	7
Accounting Branch	4	0	4	2	0	0	0	0	0	5
Registry of Publications	13	6	6	0	0	0	0	0	0	2
International Control Office	1	0	2	2	0	0	0	0	0	2
House Staff	0	3	39	3	0	1	0	1	0	2
Liaison—S. America	0	0	0	0	0	0	0	0	0	5
Special Organizations	29	22	26	6	1	3	4	3	1	50
Branch Offices	4	8	0	0	0	0	0	0	0	0

competitive selection. . . ."⁴⁷ The committee asserted the desirability of procuring an equitable distribution of positions among member states, "always bearing in mind, however, the necessity of obtaining competent officials."⁴⁸ In accordance with the scheme approved by the Assembly in September, 1921, the Secretary-General has arranged that a candidate for a post in the Secretariat or in the International Labor Office shall send statements of his qualifications in writing.⁴⁹ Persons may be designated as candidates by officials connected with the League, by members of the governments represented in the League, or by direct application. If a candidate appears sufficiently promising, the Secretary-General may have him come to Geneva, where he is examined. If the results are satisfactory, he is given a position, with the understanding that the first year of his service is probationary. It is necessary for an applicant to show that he has diplomatic ability in dealing with officials of other states in intricate international situations, that he is a specialist adequately trained in the field which he hopes to enter, and that he is able to speak several languages.

Members of the Secretariat have, in fact, been recruited chiefly from persons who have had practical experience in the fields of their specialization.⁵⁰ In some cases they have come from the civil service of their own state, either with or without an understanding that they might return to the national service after a designated period of years. There has been criticism of this practice of accepting officials in the Secretariat who expect to return to their own country and resume a civil service position. Mr. C. Howard-Ellis comments as follows: "Some such arrangement has the advantage of keeping the Secretariat more closely in touch with the governments of the countries concerned, but an obvious danger, of course, is a loss of independence and too great attention to purely national points of view. The danger is that an official should come to look upon himself as the representative of his government or foreign office at Geneva and his stay at Geneva as only a step in his career in his home service. On the whole, it would seem preferable that Secretariat officials should be free from any ties of this sort, and that their intimacy with and influence on the

⁴⁷ *Records of the Second Assembly: Report of the Special Committee on the Organization of the Secretariat*, p. 188.

⁴⁸ *Ibid.*, p. 188.

⁴⁹ C. Howard-Ellis, *op. cit.*, p. 195.

⁵⁰ *Ibid.*, p. 196.

international policy of governments members of the League should be a direct "function" of the prestige of the League and their own usefulness and capacity to inspire confidence as its servants."⁵¹

The tenure of office in the Secretariat and the International Labor office was dealt with in the report of a committee of experts, adopted by the Second Assembly.⁵² It is provided therein that "members of the higher staff," down to and including chiefs of sections, shall be appointed for seven-year periods, and may be reappointed only in exceptional cases. The purpose of this limitation of tenure is to make it possible for higher posts "to be filled by persons of any country whatsoever who are of recognized importance and widespread influence among their own people, and whose views and sentiments are representative of their national opinion."⁵³ The principle of frequent changes was regarded as "essential to make the League a living force among the nations." At the termination of the first period of seven years, a considerable number of exceptions were allowed, so that there would not be too large a turnover in the upper ranks of the Secretariat and Labor Office. Other officials of the two organs are on a seven-year basis, but with the understanding that their appointments may be renewed up to twenty-one years in some cases, and to twenty-eight in others.⁵⁴

The removal of members of the Secretariat and the Labor Office was first dealt with in 1920 by the following resolution of the Assembly: "That all members of the Secretariat and the International Labor Office appointed for a period of five years or more by the Secretary-General or the Director of the International Labor Office shall, in the case of dismissal, have the right of appeal to the Council or to the Governing Body of the International Labor Office, as the case may be."⁵⁵

In 1927 the above resolution was abrogated by the Assembly and a new one was adopted, creating, as from January 1, 1928, a League of Nations Administrative Tribunal, with the understanding that in 1931 the continuance of the organ shall be reconsidered.⁵⁶ The nature of this tribunal may be seen from the following article (II)

⁵¹ C. Howard-Ellis, *op. cit.*, p. 196.

⁵² *Records of the Second Assembly*: Report of the Special Committee on the Organization of the Secretariat, pp. 189-190.

⁵³ *Ibid.*, p. 189.

⁵⁴ *Ibid.*, pp. 190-191.

⁵⁵ *Official Journal*, Special Supplement 1-6: Resolutions Adopted by the Assembly during its First Session, p. 24.

⁵⁶ *Official Journal*, 9th year, No. 5 (May, 1928), p. 751.

taken from its statute: "The Tribunal shall be competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials of the Secretariat or of the International Labor Office, and of such provisions of the Staff Regulations as are applicable to the case. The Tribunal shall be competent to settle any dispute concerning the compensation provided for by Articles 43 or 71 of the Staff Regulations of the Secretariat or Articles 96 *bis* or 61 *ter* of the Staff Regulations of the International Labor Office, and fix finally the amount of compensation, if any, which is to be paid. The tribunal shall be open: (a) to the official, even if his employment has ceased, and to any person on whom the official's rights have devolved on his death; (b) to any other person who can show that he is entitled to some right under the terms of appointment of a deceased official or under provisions of the Staff Regulations on which the official could rely."⁵⁷

Under the statute, the Tribunal is composed of three judges and three deputy-judges, all belonging to different nationalities, who are appointed by the Council for a term of three years. Its decisions, taken by majority action, are final. A complainant may institute proceedings within ninety days of the time when the act of which he complains was committed, providing he has exhausted other means of redress and has deposited one-fiftieth of his annual salary, which may be refunded if it is shown that "there were sufficient grounds for presenting the complaint." The general expenses of the Tribunal are divided between the Secretariat and the International Labor Office "in equal shares or in such proportion as the Assembly may determine," while the expenses attributable to a hearing are borne by the administration against which the complaint is made. By Article xi the organ is empowered to draw up rules of court covering: (a) the election of the president and vice-president, (b) the convening and conduct of the sessions, (c) the practice to be followed in presenting complaints and in the subsequent procedure, and (d) all matters relating to the operation of the tribunal which are not settled by the statute. In accordance with this stipulation, a group of rules, embodied in fifteen articles and an annex, was adopted on February 2, 1928.⁵⁸

The salaries of the members of the Secretariat and of the International Labor Office are published in the annual budget of the League, in accordance with a resolution of the Assembly adopted in

⁵⁷ *Official Journal*, as cited, pp. 751-752.

⁵⁸ *Ibid.*, pp. 753-756.

1920.⁵⁹ The budget for 1929 provides for the Secretary-General a salary of approximately \$20,000, and for the Director of the Labor Office, \$18,000.⁶⁰ Other "international officials" of the Secretariat are arranged in sixteen main groups, some of which are still further subdivided, with minimum and maximum salaries attached to each group, excepting the first three. Highest in the list is the Deputy Secretary-General with \$15,000, and the copying typists are lowest with incomes ranging from \$1,200 to \$1,600. Chiefs of sections receive from \$8,200 to \$10,600, and members of sections from \$2,750 to \$5,600. In the International Labor Office much the same sort of salary scale is being used for the "international officials."⁶¹ Both the Secretariat and the Labor Office employ "locally recruited officials," as distinguished from the "international officials." This group is likewise classified and given allowances ranging from \$2,300 to \$480 in the Secretariat, and from \$1,600 to \$480 in the Labor Office.⁶² In 1921 a salary adjustment committee was created to study the cost of living at Geneva and to make recommendations for alterations in salary schedules in conformity with its findings.⁶³ The committee is still active.⁶⁴

While the retiring age in the Secretariat and the Labor Office is fixed at sixty years, no pension system has been devised. Officials on contracts which are renewable up to twenty-one or twenty-eight years are obliged to pay five per cent of their salaries into a provident fund, to which the League adds an equal amount. At the termination of an official's service, he is given, in lump sum, the amount accumulated to his credit, including interest.⁶⁵

Three types of special allowances may be received by the members of the Secretariat and the Labor Office. For the highest officials, entertainment allowances are provided among the annual budget items, similar in nature to those which are given by a number of states

⁵⁹ *Official Journal*, Special Supplement 1-6: Resolutions of the First Assembly, p. 24.

⁶⁰ *Official Journal*, 9th Year, No. 11 (Nov., 1928): Budget for the Eleventh Financial Period (1929), p. 1859.

⁶¹ *Ibid.*, p. 1875.

⁶² *Ibid.*, pp. 1859, 1875.

⁶³ *Records of the Second Assembly*: Report of the Committee on the Organization of the Secretariat, p. 183.

⁶⁴ *World Peace Foundation Pamphlets*, vol. 11, No. 2: "Eighth Yearbook of the League of Nations," p. 15.

⁶⁵ C. Howard-Ellis, *op. cit.*, p. 178.

to diplomatic agents.⁶⁶ Other officers may draw on a general fund maintained for that purpose. The "locally recruited officers" are allowed a bonus of thirty dollars a year for each child under the age of 18.⁶⁷

In addition to the Secretariat proper, there are several other organizations in the League which require the services of a permanent staff. Most important among them are the special organizations dealing with economic and financial questions, health, and communication and transit. Each commonly includes thirty-five or forty persons. The minority commissions, the Opium Board, and the International Relief Union are also organs with permanent staffs, and the personnel of these bodies is also classified for purposes of remuneration. The members are not selected and governed under the same rules that apply to the members of the Secretariat and the Labor Office, being usually experts, appointed in some instances by the Council and in others by the governments which they are expected to represent.⁶⁸ Where the Council makes the appointments, it is customary to do so after consultation with the governments concerned. Governmental appointees are frequently taken from the internal services of their respective states.

Conclusions. As the field of international administration widens, increasing attention must be given to personnel problems. The possibility of a unified civil service system for the recruitment and management of the personnel of all administrative organs naturally suggests itself; but the idea is both unsound and unwise so long as the agencies themselves are distinct. The supervision by the League of Nations, under Article 24 of the Covenant, of those public bureaus and commissions which have agreed to accept it, does not imply any centralization of personnel control.⁶⁹ There is no discernible tendency toward any form of centralization in this field, and consequently the *status quo* is likely to continue for some time. Fortunately, the waste is not great. Nevertheless, future expansion of the field of international administration may be expected to give the subject a considerable degree of importance.

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⁶⁶ In the Secretariat the following officials receive such allowances under the provisions of the budget: Secretary-General, Deputy Secretary-General, and Under-Secretaries General. In the Labor Office, the Director and Deputy-Director are included. See *Official Journal*, 9th year, No. 11, pp. 1859, 1875.

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*, pp. 1808-1821.

⁶⁹ *Handbook of International Organizations* (Geneva, 1925), pp. 7-8.

NEWS AND NOTES

PERSONAL AND MISCELLANEOUS

Compiled by the Managing Editor

As announced in earlier issues of the *Review*, the twenty-fifth annual meeting of the American Political Science Association will be held at New Orleans on December 27-30. Headquarters will be at the Jung Hotel. The first session will take place on December 27 at ten o'clock, and will be devoted to the general subject of impeachments. A subscription luncheon will follow at noon. Nine round-tables will hold meetings in the afternoon. They (with directors) are as follows: 1. Rural Government, C. M. Kneier; 2. National Administration, L. M. Short; 3. Training for Citizenship, Charles E. Merriam; 4. Pressure Groups in Legislation, P. H. Odegard; 5. Methods of Measuring Municipal Activities, Harold W. Dodds; 6. Psychology of Political Types, Harold D. Lasswell; 7. Public Personnel Policies, W. E. Mosher; 8. Recent Contributions to Political Theory, W. J. Shepard; 9. Legislatures and Legislation, A. R. Hatton. The Executive Council and Board of Editors will meet during the same afternoon; and in the evening presidential addresses will be delivered by Professor John A. Fairlie, of the American Political Science Association, and Professor Thomas I. Parkinson, of the American Association for Labor Legislation. The round-tables will hold their second meetings during the forenoon of December 28, and a subscription luncheon will be addressed by ex-President Frank J. Goodnow, of the John Hopkins University. An afternoon session will be devoted to foreign governments; the annual business meeting will be held afterwards; a joint subscription dinner with the American Association for Labor Legislation will be addressed by Professor Walton H. Hamilton, of Yale University; and the day will close with an evening session on international relations. On Monday, December 30, the forenoon will be devoted to a joint meeting with the Association of American Law Schools on the subject of judicial reorganization. A subscription luncheon will be addressed, on the subject of police administration, by Mr. August Vollmer, of the University of Chicago. The last series of round-table meetings will take place during the afternoon, and will

include one devoted to city-county consolidation, directed by Thomas H. Reed, and one on types of appeals in presidential campaigns, directed by W. Brooke Graves. It may be added that the round-table dealing with pressure groups will be directed at its second meeting by Edward B. Logan, and at its third by E. Pendleton Herring; also that on the last two days there will be a round-table on state administration, led by L. M. Short.

Dr. Jeremiah W. Jenks, research professor of government at New York University and president of the Alexander Hamilton Institute, died at his home in New York City on August 24.

Mr. J. W. Manning has been appointed part-time instructor in the department of political science at the State University of Iowa for the current year.

Mr. Robert S. Lynd, who has been on the staff of the Social Science Research Council for a number of years, has been made permanent secretary of the organization.

Mr. R. G. Concern has been appointed instructor in political science in the Louisiana State Normal College.

Dr. Roy E. Brown, recently appointed assistant professor of political science at the University of North Dakota, has been chosen secretary of the North Dakota Municipal League.

Dr. Hugo Wall, of Stanford University, has been appointed head of the department of political science at the Municipal University of Wichita.

Dr. Plato Lee Gettys has been appointed assistant professor of political science at the University of Oklahoma.

Mr. Charles W. Shull, graduate student at Ohio State University, received the doctorate in August and has become an instructor in political science at the University of Kentucky.

Dr. John W. Pfiffner, who has been teaching at the Municipal University of Wichita, has accepted a position as assistant professor of public administration in the School of Citizenship and Public Administration at the University of Southern California.

Professor Linden A. Mander, of the department of political science at the University of Washington, delivered several lectures during the

summer at the University of Mexico on the subject of the British Empire. Professor Francis G. Wilson, of the same institution, spent the summer in European travel.

Dr. Bessie L. Pierce, formerly of Iowa State University, has accepted a position on the social science staff at the University of Chicago in connection with the Local Community Research Committee. Her work will be devoted primarily to the history of Chicago.

Mr. Benjamin E. Lippincott, whose graduate work in political science was done at Oxford and the London School of Economics and Political Science, has joined the staff of the political science department at the University of Minnesota as an instructor. His special field is recent political theory, and he will have charge of the course in elements of political science.

Professor A. B. Butts, of Mississippi Agricultural and Mechanical College, is giving the courses in state and local government at Yale University during the absence of Professor Milton Conover, who is spending the year in Europe.

Dr. Frank M. Stewart, of the University of Texas, has been promoted from associate professor to professor of government, and has been appointed chairman of the department of government for the next biennium.

Dr. Charles M. Kneier has been promoted from an assistant to an associate professorship in political science at the University of Nebraska. Mr. Lawrence Durisch, a fellow in political science during the past year, has been appointed to an instructorship for 1929-30.

Professor Graham H. Stuart, of Stanford University, is spending his sabbatical year in a study of the international administration of Tangier. He has been appointed visiting Carnegie professor at the Universities of Montpellier, Poitiers, and Toulouse. Dr. Harold H. Sprout, who recently completed his graduate work at Wisconsin, is in charge of Professor Stuart's courses during the year.

During the summer, Professor Finla G. Crawford, of Syracuse University, received the Democratic nomination for the office of mayor of Syracuse.

Under the auspices of a joint committee appointed from the two houses of the legislature and by Governor Roosevelt, a comprehensive

survey of the public service commission laws in New York state is being made by the members of the faculty of the School of Citizenship and Public Affairs at Syracuse University. Hearings, begun in October, are to be participated in by outstanding commissioners from other states, technical experts both from New York and from elsewhere, representatives of the utility companies, and other interested parties. The survey is under the general direction of Professor William E. Mosher.

Mr. William Watts Folwell, first president of the University of Minnesota (serving from 1869 to 1889), died at Minneapolis on September 18. Mr. Folwell was professor of political science at Minnesota from 1875 to 1907. He was a participant in many important public movements and services, and in his last years devoted his efforts to the writing of an excellent four-volume history of Minnesota, which was completed, and the preparation of his reminiscences, which were incomplete at his death. In 1925 he received the only degree of LL.D. ever conferred by the University of Minnesota. The rule against the conferring of honorary degrees was broken in order to honor the man who established the rule.

In connection with the annual conference of the Social Science Research Council at Hanover in August, representatives of social science research councils in eight universities held a series of three meetings to discuss common problems. The meetings were attended by Professors Schlesinger of Harvard, Slesinger of Yale, McBain of Columbia, Gee of Virginia. Odum of North Carolina, Handman of Texas, Wildman of Stanford, and White of Chicago.

The University of Chicago is holding a Police Conference on November 11 and 12. The meeting is to be devoted to the problem of uniform annual reports and uniform police statistics, following up the work of the committee of the International Association of Chiefs of Police on uniform crime records. Invitations have been extended to the larger police departments of the United States. Chief Vollmer is the director of the conference, Chief William P. Rutledge of Detroit is associate director, and Mr. Bruce Smith is consultant.

The dedication of the Social Science Research Building at the University of Chicago will take place on December 16 and 17, in connection with the autumn convocation. While plans for the dedication ceremonies are not complete at the time of writing, it is definitely known

that Sir William Beveridge, director of the London School of Economics and Political Science, and Professor C. Bouglé of the Sorbonne, will be present. Sir William Beveridge will deliver a series of six lectures on unemployment in Great Britain. A representative of German scholarship will also be present, and invitations have been issued to distinguished representatives of the social science group in the United States. The University cordially invites members of the American Political Science Association to inspect the building when occasion permits.

The latest regular session of the International Institute of Public Law was held at Paris, June 22-24, 1929. The subjects discussed by scholars from various European countries included the state of representative government, new tendencies in connection with declarations of rights, the popular initiative and referendum, and the rules of constitutional law in connection with the making and ratification of international treaties. The meeting was participated in by Professor James W. Garner, of the University of Illinois.

The first School of City Planning in this country was established at Harvard University this autumn with the aid of the Rockefeller Foundation. The new school is to be a graduate professional school, coördinated with the existing schools of architecture and landscape architecture. The nucleus for it was supplied by a chair of regional planning, given to Harvard by Mr. James F. Curtis at the close of the last academic year in memory of Charles D. Norton, who inspired the Regional Plan of New York and presided over its earlier developments. The function and purposes of the new school will be not only to train men to be professional city planners, but to give a sound conception of city planning to men who are going to be architects, landscape architects, engineers, or leaders in various public endeavors, so that they may be efficient coöperators in the comprehensive field of city planning.

The Labor government in England has definitely promised to make provision for a conference on electoral reform, and the chairmanship has been accepted by Lord Ullswater, formerly speaker of the House of Commons. The activities of this conference may be expected to engage the attention of all students of political science. In anticipation of the inquiry, the Proportional Representation Society has issued two new pamphlets, one (No. 66) dealing with the statistics of the general

election of last May, and the other (No. 67) examining the various proposals for electoral reform.

The International Institute of Intellectual Coöperation has endeavored, since its establishment, to promote coöperation between institutions for the scientific study of international relations. A first meeting of the directors of such institutions was held on invitation of the Institute in March, 1928, at the Deutsche Hochschule für Politik, Berlin. At a second meeting, held in March, 1929, at the Royal Institute of International Affairs in London, it was decided to draw up a preliminary scheme for a handbook or lexicon of political terms. This decision was based on a memorandum submitted by Professor Wilhelm Haas, of the Deutsche Hochschule für Politik, emphasizing the fact that confusion and misunderstanding are constantly being caused by the inaccurate use or imperfect comprehension of political terms. The difficulties which arise in this connection were said to be of a two-fold character—first, in connection with terms (e.g., law, droit, recht, diritto) which have a slightly different meaning in different languages, so that a literal translation is necessarily misleading, and second, in connection with terms, often in constant use (e.g., trustee, ordonnance, dominion, commonwealth, covenant), which are peculiar to individual countries and therefore do not lend themselves to exact translation. It is not intended to aim at the production of a work of the scale and scope of a scientific dictionary, but simply of a handbook convenient for reference, giving concise definitions which will meet the practical needs of the large and growing class engaged in the handling of public affairs in the international field. On the other hand, it is not desired to confine the work to the field of public law and political science in the narrower sense. Economic, sociological, and even geographical, terms are to be included, provided they fall within the two classes mentioned above.

Twenty-eight students from twenty-three colleges and universities in almost as many states met with an equal number of British students last July and discussed the renunciation of war and the acceptance of arbitration, disarmament, and international coöperation. The opening session of the conference was held in the Mansion House in London, the Lord Mayor presiding, and Viscount Cecil and Mr. Earle Babcock, of the European Center of the Carnegie Endowment for International Peace, making the principal addresses. The American and British students then went to Merton College, Oxford University, where

they divided into three commissions. Each commission studied and discussed one of the subjects and afterwards submitted resolutions to plenary sessions of the conference for action by the entire group. It is noteworthy that differences of opinion which developed were not between American and British delegations but between majorities and minorities, each frequently containing representatives of both nationalities. The American students, equally divided between men and women, were selected from international relations clubs, on the basis of scholarship and participation in school activities, by the clubs' national secretary, Miss Amy Jones, of the Carnegie Endowment, assisted by Professor Clyde Eagleton, of New York University. Miss Jones, with Professor Eagleton and Professor Howard White, of Miami University, as faculty advisers, accompanied the group. After the conference, the American group spent three weeks on the Continent, studying the work of the principal agencies of international government and visiting places of interest in Holland, Switzerland, and France. They attended a session of the Permanent Court of International Justice and were addressed by the registrar of the Court, Mr. Hamarskjold. A special course was arranged for them at the Geneva School of International Studies. A similar conference, to meet at some American university, will probably be convened within the next two years.

The following statement from Professor William Anderson, who has been in charge of the personnel service set up experimentally by the Policy Committee of the American Political Science Association, will be of interest. "The Personnel Service was established under the authority of the Committee on Policy, and was provided with funds for a single year. The purpose was to ascertain, by this experiment, whether or not a personnel service for the American Political Science Association would have a real value in placing men where they could do the most good. Because funds were limited and the time for preparation was short, it was agreed that the service should in its first year limit itself substantially to the placement of those who had recently obtained their doctor's degrees, or who were about to obtain them. A total of thirty-three names of such persons were obtained in time to be included in a mimeographed list. A number of others came in too late to be included, and about a dozen other persons who wished to have their cases handled more confidentially also submitted their names and the requested personnel information. The mimeo-

graphed list was sent to practically all colleges and universities in the country having more than about three hundred students. Junior colleges, normal schools, and teachers' colleges were not included in the list. No follow-up letters were sent to the institutions which received the mimeographed list. In the course of the spring and early summer about twenty institutions made direct inquiries of the Personnel Service concerning men. It is evident that some institutions used the list without writing such letters of inquiry. A check-up made early in June revealed that at that time about half of the men named in the mimeographed list had already received appointments, and subsequent correspondence reveals that practically all of the men were placed in college and university positions. Whether this was in large part due to the Personnel Service it is hard to say. The women whose names appeared in the list evidently had less success in finding satisfactory college positions. The Committee on Policy, which now has its report practically ready, will not continue the Personnel Service during the present academic year. If its plans for increasing the services of the Political Science Association are carried out, a permanent personnel service will be established at the central office of the Association. The limited experiment of this year has shown that such a service can be useful, but it has also made evident the fact that someone must be permanently charged with the responsibility if the service is to achieve a maximum of usefulness."

The Study of the Ill as a Method of Research into Political Personalities. The student of political behavior would like to know why some people lead and others follow, why some rebel and some conform, why some are ruthless and others are conscientious. In some degree, this question can be answered for particular communities by the collection of data about the economic and religious and racial affiliations of those who gain, and those who never attain, political power.¹ Data of the type available in *Who's Who* are inadequate to supply the investigator with enough material to answer several important questions. Why do members of the same family, living in the same community, attending the same schools, subjected to the same racial, ecclesiastical, and economic environment, differ so widely in their traits and interests? Why is one brother a driving administrator and another a plodding routineer? Why does one brother be-

¹ One of the most exhaustive studies of this kind is Fritz Giese, *Die öffentliche Persönlichkeit* (Leipzig, 1928).

come a public advocate of fundamental changes in society, while another quietly accepts the established order? Why does one brother write books in political science and political philosophy, while another creates a political machine?

Political and social science depends upon autobiographies, biographies, and aphorisms to familiarize the student with the many factors which differentiate one human personality from another. But it is no secret that the usual literary autobiography or biography omits or distorts much of the intimate history of the individual which modern science has come to regard as important.

Where is it possible to secure a supply of life histories in which the usual conventionalities are ignored, and which are acquired by specialists in the sociological, psychological, and somatic influences which play upon the individual? There exist in our modern societies several sizeable collections of such material which have hitherto received slight attention from students of social science. I refer to the case histories of those individuals who are ill, and especially those who suffer from mental disorder.

The case history of a patient in a good mental hospital is a document to which many individuals contribute. There is the record of the physical condition of the individual, as revealed by an examination at the time of his admission. This may be supplemented by transcripts of previous and subsequent investigations. There is also the record of the routine psychometrical test performances of the subject. There is the report of the preliminary interview and diagnosis by a psychiatrist. This is amplified by a transcription of the record of a staff conference attended by the whole body of physicians and psychiatric social workers attached to the hospital. The usual routine is for the physician and social worker in charge to present a summary of the case, to present the patient for observation, and to consult upon the diagnosis and therapy after the patient has been escorted out. The patient may be presented at several staff conferences for the purpose of discussing whether he is in a condition to permit of release, parole, or transfer. During his stay in the institution the nurses, as well as the physicians who make rounds, add their descriptive comments upon the behavior of the individual. The social service department gets in touch with relatives and acquaintances for the purpose of presenting a biographical picture of the subject. Occasionally the patient will volunteer an autobiography which is filed with his record. Correspondence with individuals interested in the case at various stages will often bring out valuable side-lights.

Due to the growing emphasis upon the importance of understanding personality as a functioning whole, modern medical men are increasingly willing and anxious to assemble all the data about the family, business, recreational, and other behavior of the person. From this they are able to judge whether or not some pathological symptoms are to be regarded as especially ominous. The modern emphasis upon the rôle of reverie and preoccupation in the development of traits and interests leads to the inclusion of much data about the night-dreams, day-dreams, ambitions, grievances, enthusiasms, and loyalties of the person. All this sociological and psychological material increases the value of the case record for the person who wants to use it for the purpose of understanding the genesis of social traits and interests.

Sometimes the case histories concern people who are normal, but who for one reason or another have been committed for observation. The German government was not the only one in the late war which resorted to the expedient of avoiding the appearance of dissension by turning over certain pacifists to a mental hospital. The records obtained in such cases are very intimate, and are of people who were without psychosis.

Quite often the specifically pathological features in the history are very meager. One prominent politician (a mayor of a large city) was brought into a mental hospital suffering from delirium tremens. He was only "insane" when he was passing through this alcoholic episode, and was immediately released. But the record of what he said and what he did during the delirium casts a brighter light on the deeper motivations of his political career than many pages of conventional biography. Since he was no longer able to maintain his repressions, his inner phantasy life came into the open.

For many reasons, full advantage has not yet been taken of the opportunities afforded by convalescence and care in hospitals and sanitariums for the collection of valuable life histories. During various phases of illness and convalescence, many individuals are perfectly willing to fill in the time talking about their philosophy and practice of living. Those who suffer, for instance, from certain forms of mental disorder are troubled only occasionally by delusional ideas. During the clear periods they are to all intents and purposes normal, and are often gratified if anyone takes sufficient interest in them to solicit more details of their life stories. Another form of mental disorder is characterized by the fact that the patient's difficulties center about a single system of ideas which, if left untouched by the interviewer, permits him to be dealt with as an ordinary individual.

The interviewers who may be used to increase the value of current record-taking for the common progress of the human sciences may be selected from social scientists who are given special psychological training and attached to hospital staffs; or from psychiatric social workers who are given special training in politics and economics; or from socially interested physicians who receive special social scientific instruction. Needless to say, the documents can be taken and used only under the customary guarantees respecting anonymity.

Perhaps it ought to be emphasized that inmates of mental hospitals, or patients of private practitioners, are not the only sufferers who may be suitably approached for life histories. Many of the people who are immured for considerable periods in rest-homes and hospitals are the victims of ordinary organic ailments, remain in full possession of their faculties, and are glad to relieve the boredom of an enforced idleness by pouring out the details of a career which, under other conditions, they would be too busy or too reluctant to reveal.

The recent efflorescence of medical psychology has not only added to the number of reliable intimate life histories which are, under suitable guarantees, available for comparative purposes, but it has supplied a set of technical procedures which may be applied, and of tentative hypotheses which may be tested, in the case of any personality, be he ill or well. The "complex indicators" which were developed by Jung may be used (in modified form) for anyone for the sake of showing by reaction-time variations which stimulus words have special affective significance to the individual. Effort may then be directed toward the recovery of the situations in which these terms acquired their special value to the person. The technique of the interview as developed by Freud and modified by others is likewise capable of direct application. Many devices have been developed to draw from the individual those random gestures, word-slips, and concentrations of affection and hostility which facilitate the production of significant memories and the diagnosis of unconscious trends.

Thus it is possible to set about the task of securing an ample control group of "normal" cases against which conclusions which are devised largely on the basis of pathological subjects can be checked. Two principal lines of approach are possible. Certain individuals are willing to submit to psychological analysis for scientific reasons. They see the desirability of having such a control series from successful people, and they are willing to place themselves at the disposal of a scientifically trained interviewer, understanding that they are to be examined

just as thoroughly as though they were pathological cases. There is an increasing company of younger men and women who feel themselves perfectly normal, who want to see whether such a sustained psychological procedure will, after all, give them a deeper understanding of themselves and others. Since they have no fear of the consequences, they are willing to satisfy their curiosity to see whether there is anything in modern medical psychology which will seem important to them after they have tested it.

The second line of approach is to those individuals who suffer from some relatively minor morbidity which they hope to see removed as a result of a psychological examination to which they submit themselves for scientific purposes. Light depressions, simple bodily (hysterical) symptoms, such as headaches, constipation, biliousness, and insomnia (when adequate physical cause is undiscoverable) are often found in individuals who suppose themselves, and are supposed by others, to be normal.

It would be advisable for a responsible body of social scientists to reflect upon the possibility of creating machinery by which especially prominent figures could be reached for intimate study, under especially rigorous guarantees that the document would be kept confidential for a certain number of years, or would be exposed for comparative purposes under very special safeguards.

Some immediate practical advantages arise from the study of the mentally disordered. The modern political and business administrator ought to be able to detect at least the cruder manifestations of certain psychotic processes which are not infrequent, and which, unless promptly referred to medical attention, may create enormous difficulties inside an administrative organization. This is especially true of the elusive paranoid types, the external features of whose personality are well preserved, and whose power for harm is in consequence much greater. Many of the accusations and scandals of public life are instigated by men whose psychotic condition could have been recognized by a trained superior, and whose pathological extremes might have been aborted by preventive therapy. The modern public school teacher is supposed to see that Tommy is suffering from adenoids, but the modern administrator is not expected to see that his subordinates need expert aid before a crisis is precipitated. The rôle of preventive therapy, tactfully arranged by the administrator, is much greater with those individuals who show psychoneurotic symptoms than with those who reveal signs of psychotic disturbance.

Even where therapy is out of the question, the administrator who has carefully studied the art and the science of reading a life history is able to handle certain classes of subordinates with greater success than one of equal ability who lacks this measure of sophistication. There is a rather clearly marked type of individual who is able to function as a valuable member of an administrative hierarchy as long as he has a firm, but very patient and indulgent, superior. When the superior bears down on him, he becomes unreliable and inefficient. Some administrators have enough insight into human nature to deal patiently with such subordinates; but other men, vexed at the superficial cocksureness of this type, are very likely to get out of patience shortly. It is probable that the study of life histories of men of this kind (conducted by one technically able) would give some of these administrators sufficient insight into the deep and uncontrolled character of the motivations of such subordinates to restrain them from disorganizing and futile outbursts of intolerance.

The study of the ill broadens human sympathy and understanding in many subtle and fundamental ways. The naïve popular idea that the "insane" are a degenerate species quite apart from the "normal" quietly disappears. In its place rises the conception that the frontier between what, in a given culture, is supposed to be "normal" and what is supposed to be "abnormal" is not a cliff but a slope. Neurotic symptoms and traits are never entirely absent from any life history. That is why there is little need to fear that case histories taken from the sick are likely to differ too profoundly from the case histories taken from the well.

Political science can with profit revise its interpretations of human nature in the light of the intimate histories taken from those who are to be found at various times under medical care, extend many medical psychological methods to the study of the normal, and include some medical psychological instruction in the education of its would-be administrators, political managers, political biographers, and political theorists.²

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² For a discussion of the limitations of existing records, see my article, "The Problem of Adequate Personality Records; A Proposal," in *American Journal of Psychiatry*, May, 1929.

An Experiment in By-Product Teaching. The observation here described was planned in answer to the question, Can the by-product method of teaching be profitably applied to the subject of political science? By the by-product method is meant the selection of certain mental powers or habits which are of special importance (in the settlement of government questions, for example) and the conscious direction of the student's attention to the development of these mental powers. The question is of some practical moment because the study of government is supposed to lend itself peculiarly to the formation of some such mental habits, although this fact has never been demonstrated. In making the experiment it was decided to concentrate on a single mental process, i.e., analysis, embracing (a) the detailed *scrutiny* of a subject, (b) the *dissection* into its parts, (c) the appraisal, or *evaluation*, of the parts, and (d) the *selection* of those which are essential.

The question then became, What would be the effect of a vigorous cultivation of analysis, with the aid of timely "advertising" to the student, during the ordinary operation of a course in government? Is it feasible to arrange the material of such a course so as consciously to develop the power of analysis? And if so, could this increased power be applied in other subjects outside the field of government? If we answer "yes" to these questions, the conclusion may well be that some readjustment of our present methods of teaching political science can profitably be undertaken.

The following specifications were laid down for the experiment: (1) the instruction in analysis must be a part of the regular course work, using course material; (2) it must be concentrated within a comparatively brief period, in order that if any change in analytical power took place it could not be attributed to the general mental growth of the student; (3) two tests of equal difficulty must be given, one immediately before and one after the period of training in analysis; (4) the tests must be in a field outside the domain of the course, in order that any possible change which might be registered in the second test could not be ascribed to a better general knowledge of the subject as a whole; (5) the tests must be focused chiefly on ability to analyze; (6) the tests and the intensive instruction in analysis must be given to a sufficiently large number of students to show a general average or trend.

Certain features of the intensive training were also fixed in advance: (1) the students were not informed at the time of taking the tests of their exact purpose; (2) they were, however, constantly re-

mind of the value of the analytical process and of its component parts or steps—detailed scrutiny, dissection, evaluation, and selection. Their interest was spurred by repeated reference to men in public or business life who showed especially keen analysis in their statements. Instances were frequently brought up to show illustrations of faulty or good analysis. The varied uses of this mental power were often mentioned. In short, the student was made to feel that the possession and development of this quality ranked high in importance. Analysis was advertised and sold to the student. In order that the training in analysis might not detract from the regular work of the course, but be an aid to it, most of the examples quoted, and all of the exercises given, were taken from the subject-matter of the course; and intensive training was carried on during a four-week period.

Opening with a sixty-word statement describing the chief steps in analysis and an invitation to try them on the regular course material, a four-week campaign was conducted, during which the student himself prepared five exercises and received ten comments or reminders from his instructor. The exercises, in brief, were: *No. 1.* A series of statements, 350 words in all, about the U.S. Secret Service, the *Literary Digest* poll of the presidential vote, and the Kellogg peace treaty. The student was asked to distinguish between statements of fact and statements of opinion. *No. 2.* A selection from Burke's "Conciliation with the Colonies," accompanied by three outlines or summaries of this selection. The student was asked to state which summary was the best, and why. *No. 3.* A summary of the decision in *Pensacola Telegraph v. Western Union*, giving (a) facts, (b) questions at issue, (c) decision, and (d) reasons for decision. The student was asked to build a similar summary of the decision in the *Daniel Ball* case. *No. 4.* A paper giving the four most important points in the speeches of Mr. Hoover at Newark and Governor Smith at Denver. *No. 5.* A highly detailed analysis of a lengthy assigned reading, showing which parts were essential, and why. Interspersed with the exercises were ten comments on or illustrations of successful or poor analysis by men in public life, or by newspapers and magazines, in comments on public affairs.

Two analytical tests of equal difficulty, one immediately before and one immediately after the period of training, were conducted. In order to insure equal difficulty, the tests were submitted to a committee of five experts, under the direction of Dr. Leroy A. King, professor of educational measurements in the University of Pennsylvania. The committee certified that the second test was at least as difficult as the

first, and some members thought it more so. Both tests were chosen from the field of dream psychology, being condensed summaries of articles on this subject. The student was asked to read these and then answer five questions concerning the material read, the questions being so framed as to require an accurate comprehension and evaluation of the material. The tests and exercises were prepared and conducted by Mr. Edward W. Carter and members of the staff in charge of Government 1. The subject covered by the tests was new to the student, the class having not yet taken up the study of psychology. A standard set of answers was arranged for grading to assume uniformity, and the same staff graded the answers in both tests.

Two hundred seventy-seven students took the first test and 279 the second. An improvement in analysis of 14.9 per cent in the average grade per student was registered. A small segregated group of seventeen exceptional students showed higher ratings in both analysis tests and a better than average rate of improvement. These results confirmed those of a similar experiment made in the previous academic year. In that year, however, the training was less intensive. Only one-half as much attention was devoted to the by-product, and an increase of nine per cent in the average grade on analysis was shown.

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BOOK REVIEWS AND NOTICES

EDITED BY A. C. HANFORD

Harvard University

The Duk-Duks. BY ELIZABETH ANN WEBER. (Chicago: University of Chicago Press. 1929. Pp. xix, 142.)

Civic Training in Soviet Russia. BY SAMUEL N. HARPER. (Chicago: University of Chicago Press. 1929. Pp. xvii, 401.)

Great Britain: A Study of Civic Loyalty. BY JOHN M. GAUS. (Chicago: University of Chicago Press. 1929. Pp. xxi, 329)

In these volumes we have an installment of a series of studies in civic education in the leading countries of Western civilization, under the direction of Charles E. Merriam—a guarantee of competence, good humor, and intelligence. The individual contributors have been given a free hand, subject only to the broad limitations of the program. Each volume must include an inquiry into “the various social bases of political cohesion” and a discussion of “the various mechanisms of civic education.” In detail, the editor has asked all his colleagues to consider the part played by social groupings in the state, with special reference to business, agricultural, labor, racial, and religious affiliations. He has likewise suggested to them the importance of a survey of government services, political parties, patriotic organizations, the press, formal education, and political symbolism in relation to the development of civic loyalties and competitions. In respect to methodology, the “newer” or “newest” psychological approaches are to be employed.

With this sailing chart in hand, Mr. Merriam’s explorers have set out on voyages of discovery. Dr. Weber opens by making an examination into the schemes, traditions, and ceremonies connected with training and inducting young people into citizenship among primitive, ancient, and mediæval feudal societies. The title of the volume—derived from “Duk-Duk,” a cry that initiates the ceremonies by which young men of the tribe become citizens in Melanesia—gives the clue to the ritualistic symbolism and rigid procedure by which youth is subdued to ancestral interest and tradition. With decided ingenuity and careful scholarship, Dr. Weber draws a concise picture of civic

ceremonial among the peoples she has chosen to study. The upshot is a novel and diverting volume, as amusing as it is grave. To her descriptive sections she has added some pertinent observations on the future of civic discipline. She recognizes that it is scarcely possible for Congress to prescribe war paint and mutilation as a prerequisite to naturalization, for, as she says truly enough, modern society lacks "unanimity of religio-magical conviction"—at least outside of Italy and Russia: Doubtless in Fascism and Bolshevism there is a certain return to the iron dogmatism current among earlier societies. Whether amid the individualism and skepticism of democracies it will be possible to develop a "rebirth of passion for active citizenship," our author has many misgivings. If, indeed, we are to return, under the benign auspices of the Daughters of the American Revolution, to "Duk-Dukism" pure and simple, then many loyal Americans born in the spacious days of General Grant, Roscoe Conkling, and Credit Mobilier may thank God that their shadows fall far to the East.

Appropriately enough, Mr. Harper attacks the modern age with a study of "Duk-Dukism" in Soviet Russia. With a detachment that is almost as cooling as the atmosphere of an adding machine, he describes the Communist party, the Communist young people's organizations, periodical publication, the Soviet state trade unions, civic and coöperative societies, museums, general and political education, literature, art, radio, kino, and theater under the Soviet régime. From his fact-analysis, it appears that everything in Russia is subjected to Marxist-Leninist ideology—at all events, nearly everything except mathematics and bacteriology; and the highest concern of the dictatorship is training for citizenship in a communist society. Evidently Mr. Harper has searched widely and dug deeply. The result of his labors in composition is a steel engraving of the ideal society as mirrored in the minds and practices of its Bolshevik masters—an extraordinary book, highly creditable to American scholarship, invaluable for the study of contemporary Russia, a real contribution to political science.

From orthodox Russia we pass, under the genial guidance of Mr. Gaus, to that magnificent combination of discipline and chaos known as Great Britain. This mixture of tradition, capitalism, socialism, police administration, empire, and anarchy is surveyed under the following heads: obligations of citizenship, personification of the state ("God Save the King," etc.), the influence of (geographical) place, citizen and empire, citizen and politics, personal service of the state, school system, higher education, newspaper press, economic institu-

tions, the woman citizen, civic influence of religion, and civic attitudes. Mr. Gaus is less matter of fact, less exhaustive, less systematic than Mr. Harper—and within his rights. In contrast with the latter's steel engraving, here is an impressionist picture of British society worthy of being hung in any good gallery of modern art. As such, it is appropriate to the subject, and entertaining besides. For example, instead of giving us an analysis of the various education acts, for instance, 23 Victoria, c. 12, or whatever it may be, Mr. Gaus includes such "gems of thought" as this extract from a speech by a member of a British patriotic society respecting the civic upbringing of the proletariat: "In Pentonville we have the children in on Friday evening, with their dirt and everything. We are going to teach them to love Old England, the King, and the Empire, and to feel jolly well proud of themselves." Much more illuminating this than "Be it enacted, etc." True-born Britishers, no doubt, will contend that Mr. Gaus has not penetrated to "the soul of Britain," for they do not admit that even Henry James could make the grade. But it will do them no harm to look at themselves in Mr. Gaus's mirror. John may be fatter than Sam, but the resemblance is unmistakable.

Mr. Merriam is to be congratulated on his program and the parts thus far realized.

CHARLES A. BEARD.

New Milford, Connecticut.

Principles of Judicial Administration. BY W. F. WILLOUGHBY. (Washington: The Brookings Institution. 1929. Pp. xxii, 662.)

This is a notable volume, and as timely as it is notable. It offers what for all practical purposes is a complete analysis of the American judicial system and its deficiencies, a complete record of worthwhile criticism and of remedial suggestions, a complete chronicle and assessment of progress so far made and of results so far attained by way of reform. Incidentally it affords a splendid illustration of the opportunity open to the trained political scientist, especially one who has the added advantage of administrative experience, as Dr. Willoughby has, to make constructive criticism of American institutions, encrusted as they often are with an out-of-date legalism, and to show how they may be brought abreast of the best planning, both here and abroad, to meet modern conditions. In view of such an opportunity and the attendant necessity of educating an indifferent and ignorant electorate, no political scientist need feel his science to be useless.

The truly admirable comprehensiveness of the volume before us, as well as its excellent arrangement, can best be shown by quoting, in order, some of the captions of its forty-four chapters: "Prevention of Crime and Litigation," "Administrative Adjudication," "Conciliation," "Arbitration," "Declaratory Judgments," "Advisory Opinions," "Department of Justice," "Office of Prosecuting Attorney," "Police," "Office of Coroner," "The Grand Jury," "The Accusatorial and Inquisitorial Systems of Criminal Enforcement," "The Judicial Function," "Systems of Courts in the United States," "Unification of the System of State Courts," "Judicial Councils," "Unified Municipal Courts," "Abolition of Justice of Peace Courts," "Small Claims Courts," "Juvenile and Domestic Relations Courts," "Methods of Selection of Judges," "Tenure of Office of Judges," "The Bar," "Legal Basis and Controlling Force of Rules," "Preparation of the Case," "The Trial: Rôle of the Judge," "The Trial: Production of Evidence," "The Petty Jury," "The Question of Appeals," "The Sentence," "Bail," "Office of Public Defender," "Legal Aid, Public," "Legal Aid, Private." It should be added that all of the chapters exhibit the same thoroughness of treatment and the same excellence in logical analysis.

The author's point of view is conveyed satisfactorily in the following passage from his preface: "Though constituting the primary function of government, there is probably no single thing that our governments do with less efficiency and economy than the administration of the law. Both our system of courts and their methods of procedure are almost universally recognized as unsatisfactory. In their practical operations, our courts are expensive both to the government and to litigants. They perform their work with great dilatoriness, and miscarriages of justice are frequent. So long has this unsatisfactory condition of affairs existed that an attitude of mind has obtained that these evils are in the nature of the task to be performed . . . With this position the writer has no sympathy. He sees no reason why the same standards of efficiency should not be demanded of judicial officers and institutions that is required of administrative officers and services. To him the judicial branch offers problems of pure administration analogous to those obtaining in the administrative branch. Both have to do with definite problems of organization, personnel, and procedure" (pp. xii-xiii).

Adopting this point of view, Dr. Willoughby is able to draw a clean-cut distinction between the consideration due an institution as an historical relic and that which is due it as an actual implement of government. Again to quote his own words: "It is one thing to recognize the

merits of a political institution as representing an advance over those which have preceded it and as meeting the conditions that prevailed at the time of its rise and development, and quite another to justify its continued maintenance after those conditions have passed away and new ones quite dissimilar have taken their place" (pp. 488-9). And again: "Politics is a science dealing with dynamic, not static, conditions. An institution or custom may well have been admirably devised to meet conditions existing at the time of its establishment and yet wholly fail to correspond to changed conditions. . . . At all times and in respect to all political institutions, the maintenance of things as they are should be justified by their actual results under existing conditions" (p. 498).

These passages occur in discussion of the jury, but the same gospel of freedom to plan for the present, uncontrolled by the dead hand of the past, is reiterated with reference to the accusatorial theory of criminal prosecution (p. 207), the distinction between law and equity (p. 235), the dual system of courts existing in the United States (p. 248), the office of justice of the peace (p. 304), the archaic attitude characteristic of our courts toward procedural niceties (pp. 418, 426), the formalism of legal pleadings (pp. 442, 444), the entire structure of our law of evidence (Ch. xxxv). These features of our present system, and others, have all the irrelevancy to present conditions of historical accidents; "no country, starting with a clean slate and full powers of choice, would for a moment think of creating" them (p. 235).

But not only is this attitude interesting as the distinctive contribution of political science; it is also interesting in that absence of it in the past accounts so largely for the difficulties we find ourselves in today. Few lawyers know more than a modicum of history, and this modicum they usually sentimentalize. This, however, is by no means the only reason why the movement for judicial reform has heretofore made so little headway with the great bulk of the profession whose members constitute the bar, man the bench, and crowd our legislatures. By the case system of instruction the profession is fairly enjoined to stew in its own juice—"the accumulated wisdom of the ages." Besides, it would be expecting too much of human nature to demand that men who have spent years in becoming expert in a complicated game, their special knowledge of which is not only bread and butter to them but the basis of their self-esteem, should join enthusiastically in the abolition of that game, silly as it may seem to the outsider. And in this respect the American bench, speaking by and large, is at one

with the bar, since, thanks to "the democratic movement," most American judges have always before them the prospect of returning presently to active practice. The result is that the average American judge hardly dares say his soul is his own, and is only too glad to turn over the direction of things in the court-room to counsel. As Willoughby brings out again and again, present conditions are often due, not to the law itself, but to the failure of judges to exercise the powers which the law gives them, as, for example, in granting appeals, in taking a hand in the choice of jurors, and in guiding the jury in its assessment of the evidence.

Fortunately, this is not the whole story, although far too great a part of it. In Chief Justice Taft and Mr. Root we see illustrious exceptions to the general indifference or hostility of the legal profession to reform proposals. Both are men who have had large administrative experience and have acquired the administrative point of view. Dean Pound of Harvard and Professor Sunderland of Michigan are eminent law teachers who have taken up the battle for reform; certain of the writings of the latter which are exploited in this volume are among the most valuable contributions that have been made to the cause (See his name in the Index). Also, as Dr. Willoughby himself avows in his preface, "but for the pioneer labor of Professor Herbert Harley (creator of the American Judicature Society, and founder and editor of its *Journal*) in the field of judicial reform in the United States," the present volume could hardly have been written (p. xiv). Nor should it be overlooked that very many of the reforms which Dr. Willoughby urges have already been inaugurated in one or more of the states in the Union. Indeed, it is one merit of the volume that it thus brings together the dispersed phalanxes—or better, raw recruits—of reform into a compact program, each item of which imparts to the others a new momentum toward a desired consummation.

A question of some interest suggested by the book but not specifically discussed is, What is the ultimate, distinguishing element of the judicial process; and the related question, To what extent is this indispensable to good government? The answer inferred by Willoughby to the first question is the contentious theory of justice. Are we, then, to look forward to the possibility of administrative boards, and the processes of arbitration, conciliation, and the like, entirely superseding the judiciary, or at least the theory of justice which it today so largely embodies? It would not be the first time in history that an institution which had proved itself obdurate to reform was simply outflanked and left in the rear of advancing civilization.

The volume contains a large amount of quoted material. This in no wise reflects on the author's own power of lucid expression, which is demonstrated on every page. It is well chosen for both interest and emphasis, and furnishes an excellent introduction to the literature of this immensely important subject. The volume closes with a comprehensive bibliography of forty-five pages, and an adequate index. It is unfortunate, however, that the Institute for Government Research should have seen fit to clothe so distinguished a publication in such melancholy and altogether uninviting covers. The word "vote" at the bottom of page 428 should obviously be "veto," and the word "under-rate" on page 452 was evidently intended to be "overrate."

EDWARD S. CORWIN.

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Parliament and the British Empire: Some Constitutional Controversies Concerning Imperial Legislative Jurisdiction. BY ROBERT LIVINGSTON SCHUYLER. (New York: Columbia University Press. 1929. Pp. vi, 279.)

Empire Government: An Outline of the System Prevailing in the British Commonwealth of Nations. BY MANFRED NATHAN. (Cambridge: Harvard University Press. 1929. Pp. 256).

In a book published in 1923, Professor McIlwain, of Harvard University, inquired when the American Revolution began, and supported the view that down to the appeal to arms the colonies were defending the constitution and Parliament was violating it by claiming unlimited powers of legislation in their affairs. He appealed to history. Since Ireland had its own parliament, the Irish nation was subject to rule from London only as far as it was under the same king. This view had the support of the great names of Flood and Grattan. They could not deny that the English Parliament had exercised authority in Ireland, but they held that this was limited to Parliament's rights as a judicial body interpreting the law alike for England and Ireland.

With great learning, Professor Schuyler controverts these opinions, and we have an interesting dispute between two distinguished scholars. They discuss not only the early legislative relations of the Irish and English Parliaments, but also the authority of the English Parliament over the Channel Islands and the Isle of Man, in the days before the wider question arose of power in relation to the English colonies. In the

strange organism which we now call the British Commonwealth of Nations, the Channel Islands have a peculiar place. They are the remaining heritage of the Norman Conqueror who united England to his other possessions. They lie nearer France than England; they are pre-vaillingly French in legal tradition; but they are not a part of France, nor are they a part of the United Kingdom, though they have the same sovereign. They are not represented in the Parliament at London. They make their own laws. Since Parliament does not tax these small communities, they have become a refuge for the dodgers of the high income tax in England. Yet, in spite of this independence, Professor Schuyler has no difficulty in showing that both for them and the Isle of Man, which is in a similar position, Parliament legislated in Tudor days and claimed over them the same supreme authority that it has today in law over every part of the British Commonwealth. While ordinary British statutes do not apply to them, laws affecting the whole Empire apply, in spite of their protests that these must first be accepted and proclaimed in the islands.

Professor Schuyler bases his view of the authority of the English Parliament over all the realm of the sovereign on the principle that Parliament was not inherently a representative body but a royal council advising the king. On the other hand, Professor McIlwain distinguishes between the king in council, who had no power of legislation, and the king in Parliament. The king is himself an integral part of Parliament and its acts are also his acts. He had authority, however, apart from Parliament, and it was under and within the limitations of the royal prerogative that he granted charters and constitutions to the colonies. With these—so runs the theory—Parliament was not concerned, and it was itself revolutionary when it interfered in the relations between the colonies and the king. Professor McIlwain's view is sound that government by Parliament, a representative body, makes illogical the government of dependencies that have their own representative bodies. The failure to see this caused the American Revolution. But Professor Schuyler challenges every phase of the opinion that the colonies were not under the constitutional authority of Parliament.

The British Commonwealth has overcome the difficulty in its own illogical way. It retains the omni-competence of Parliament to legislate for all the dominions of the king, but at the same time creates the convention of constitutional right under which powers of self-government, once granted, cannot be revoked. It is under this convention

that the parliament of Canada is today as really sovereign as that of Great Britain, though some things have not been reconciled with this view. The supremacy of Parliament in the past, as in the present, for which Professor Schuyler contends, runs side by side with the sovereignty of the self-governing dominions inherent in a representative system. The pity is that an earlier recognition of the paradox did not prevent the by no means "inevitable" American Revolution. Nothing is inevitable in human affairs except that human nature will always assert itself. Compromise and readjustment to meet its demands are preventives of revolution. However much we may debate the constitutional differences, normal human action would have solved them. The unwise Stamp Act was repealed because it was foolish; so also were Townshend's duties, all but one. Human obstinacy caused the Revolution; and, as Chatham and Burke showed, this folly was not "inevitable."

Space does not permit adequate review of the remaining three of the five chapters of Professor Schuyler's book. "An Early Colonial Protest" is a vivid account of the effort of Barbados to remain royalist and refuse to accept the authority of the Commonwealth Parliament. The dispute led to a proposal that Barbados should do what the United States has done in regard to Porto Rico and the Philippines, namely, send representatives to sit in the legislative body at the capital, not to have voting equality with other members, but to share in debate and to be on hand to advise concerning their affairs. The English fleet that conquered Jamaica under Cromwell forced Barbados to submit, but it became gladly royalist at the Restoration and later was hardly less assertive of the rights of its legislature than were the continental colonies.

Jamaica itself plays the chief part in the chapter on "Slavery and Constitutionalism." It led the West Indian islands in the fight against the abolition by the British Parliament, first of the slave trade, and then of slavery. Samuel Adams himself was not more vehement in asserting legislative independence than were the members of the Jamaican legislature. Year after year they and spokesmen of other colonies fought, on constitutional grounds, the efforts of Wilberforce and Buxton to free their slaves by an act of the British Parliament. In the hour of defeat, they were only partly soothed by a vote of £20,000,000 to compensate the slave owners.

Professor Schuyler's last chapter deals with "The Present Position" in the British Commonwealth. He shows how Burke's distrust of mere

legalism has found expression in the slow evolution of the British dominions, until in 1926 their equality as nations with Great Britain was formally proclaimed by the Imperial Conference with no member dissenting. Such a declaration has no legal validity, but the anomalies that remain do not trouble the British political mind. Side by side with this evolution has been the devolution of the West Indian colonies formerly so assertive of constitutional independence. They are now really crown colonies controlled by the Colonial Office in London.

Mr. Nathan's book gives an adequate account of the various phases of government in the British Commonwealth at the present time. He stresses the incessant change. The eighteenth century knew little of evolution. Because political rights were regarded as static, one side in the American dispute asserted the supremacy of Parliament, the other colonial freedom, and both appealed to the past, ignoring the changes due to evolution, as inevitable in politics as in biology. Mr. Nathan's list of the British territories shows what a vast and complex organism they make. Canada, the most populous of the colonies, led in the political evolution which made the larger colonies nations, the equals of Great Britain. This necessity the great war revealed. Accordingly, in July, 1919, the colonial secretary, Lord Milner, said in the House of Lords: "The only possibility of a continuance of the British Empire is on a basis of absolute out and out equal partnership between the United Kingdom and the dominions" (p. 70).

Mr. Nathan gives a clear description of the various types of government—dominions, India, crown colonies, protectorates, mandated territories—and outlines the function of the crown, Parliament, the executive government, the judiciary, etc., in this intricate system. The crown has still in theory extensive powers, some of which might in an emergency prove useful. It is, for instance, by no means certain that at a change of government the king is bound to accept the advice of the retiring prime minister as to the person to be asked to form a ministry. New anomalies arose when the king called upon the leader of the minority to take office. In India a troublesome situation is created by the demand for not only dominion status but dominion self-government. Since Mr. Nathan wrote, women have secured the franchise on equal terms with men (p. 206). The problems arising from mandates are being slowly defined. Palestine is proving no bed of roses. Germany desires the restoration of the mandated colonies, while the British government has declared that the mandates are irrevocable in their nature. Repose is certainly not the impression that one gets from a

survey of the British Commonwealth, and this is perhaps one chief sign of its vitality.

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Constitutional Laws of the British Empire. BY LEONARD LE MARCHANT MINTY. (London: Sweet & Maxwell, Ltd. 1928. Pp.xvii, 258.)

This book was written primarily for the use of English law students preparing for their bachelor's and bar examinations. The general plan is similar to that of the well-known textbooks, e.g., Taswell-Langmead's *Constitutional History*, Chalmers and Asquith's *Constitutional Law*, and Thomas's *Leading Cases*, all published by the firm issuing this volume. The number of editions through which these earlier texts have passed is strong evidence of their success in satisfying the need felt in England for books of this character. Like the earlier volumes, the present one will in all probability prove to be very popular as a concise and up-to-date treatment of its subject, and will be of substantially the same value in American schools for use as supplementary reading in courses in English history and government.

The first half of the book is devoted to matters of more general interest, such as the validity of colonial legislation and conflict of laws within the Empire, the operation of constitutional conventions in self-governing colonies, and the appellate jurisdiction of the Privy Council. This is the most valuable part of the book for use, as suggested, in American schools. There are also brief chapters dealing, respectively, with the Irish Free State, India, partially self-governing colonies, and crown colonies. The least valuable part of the book is the two chapters dealing with federalism in general, and federal-state relations in particular. This is true, at least from the point of view of an American student, because the whole discussion of federalism is vitiated by a curious misinformation about American government and constitutional law, which are introduced as a basis for comparison.

The method of treatment throughout is to present material from cases and statutes. Statutes are quoted freely, and the facts of cases are quite fully stated. On the whole, cases are remarkably well presented; only one instance has been detected in which the statement of a case does not seem clear, i.e., in the rather important case of *Secretary of State v. O'Brien* (p. 216). This relatively complete reproduction of the materials has obvious advantages for the student who

does not have ready access to the law reports of various British jurisdictions and of course economizes the time of all readers. The defect, however, is that it leads sometimes to a too close attention to the letter of the law and a neglect of constitutional practice. Thus, Mr. Minty is led to overlook the actual direct character of the election of the American president (p.141), and to slight the conventions followed in appointing governors of dominions (p.113). This tendency becomes serious when it is erroneously assumed (p.199) that the constitutional amendment proposed by the Labor government of Australia, to bring employees on state-owned railways under the jurisdiction of the Commonwealth Arbitration Court, was adopted by popular vote. With this assumption, the important *Engineers' Case* (1920, 28 C.L.R. 129) becomes altogether meaningless. It should also be noted that the doctrine of the immunity of state instrumentalities in Australia has never turned upon the distinction between proprietary and governmental functions as in the United States (p. 191 *seq.*).

JOSEPH R. STARR.

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Geschichte des neuern Schweizerischen Staatsrechts, zweiter Band: Die Zeit der Restauration und der Regeneration, 1814 bis 1848. BY EDUARD HIS. (Basel: Helbing und Lichtenhahn. 1929. Pp. xxiii, 774.)

Die Schweiz seit 1848: Geschichte, Politik, Wirtschaft. BY EDUARD FUETER. (Zurich: Orell Füssli. 1928. Pp. 305.)

Although written from different viewpoints, these two important contributions to the history of modern Switzerland complement each other admirably. Together, they cover slightly more than a century of development, from 1814 to 1928, dovetailing neatly at the year 1848 when the federal constitution was adopted. Both are thoroughly elaborated, resting on profound study of the sources. Neither is history in the narrative sense; each seeks, rather, to analyze events occurring within a given circle of interest during a given period of time. While Professor His devotes himself primarily to public law and Dr. Fueter to economic background, the results do not vary so much as one might anticipate, for each is keenly conscious of the importance of the other's field. Moreover, as the former author remarks, "the political development of the first half of the nineteenth century as

a whole rested upon the legal structure of the state, in contrast with which all other factors, such as religious, economic, and social considerations, lost sharply in significance." On the other hand, the period of Swiss history treated by Dr. Fueter has witnessed not only profound industrial changes, but with them also a shift of interest in the political field from constitutional to economic issues. Here again, therefore, the two books complete each other, since each emphasizes the topic peculiarly characteristic of its period.

While substantially true, the dictum of Professor His, quoted above, seems to undervalue considerably the confessional differences which convulsed Switzerland during the years immediately preceding the Sonderbund war of 1847. Reference to the body of the work, however, dispels any apprehension on this score; for while he has treated thoroughly every ramification of Swiss public law during the Restoration (1814-1830) and Regeneration (1830-1848) periods, with the exception of treaties and international affairs, he has devoted an admirable chapter of more than one hundred pages to the relations of state and church. There are also excellent discussions of the political theories of the period, of cantonal and communal governments, of citizenship, of finances, of army organization, of schools and poor relief. A brief final chapter draws general conclusions which exhibit rare judgment and sense of proportion.

The reader cannot help feeling amazed, and disheartened as well, at the enormous mass of detail gathered into this bulky volume dealing with one small country during a third of a century of its existence; nevertheless it was precisely the years from 1814 to 1848 that witnessed the laying of the legal foundations upon which Swiss government has rested to the present day. Moreover, the serried mass of facts marshalled by Professor His is justified, in part at least, by the variety of legal forms prevailing in the nineteen whole and six half cantons, a variety so great that, lessened as it has been by eight decades of federal rule, it still seems amazing to the foreign observer. In short, Professor His has produced a book of high value, particularly to the Swiss lawyer, historian, and political scientist. It is in all respects a worthy conclusion to his earlier volume dealing with the period of the Helvetic Republic and the Act of Mediation (1798-1813).

While characterized by fine scholarship and critical ability, Dr. Fueter's book makes a distinctly wider appeal. It is the first of a series of monographs on the creation of modern states, in the an-

nouncement of which one notes with interest the fact that André Siegfried is to contribute the study of the United States. Other countries to be dealt with include England, Germany, Russia, Italy, and Hungary. Starting with a brief account of conditions in Switzerland about the middle of the nineteenth century, Dr. Fueter deals with successive periods down to and including the World War, adding a few words on post-war happenings. With the exception of the latter, each period is analyzed thoroughly, both as regards constitutional and political, and also industrial and commercial, developments, with emphasis, as stated above, on the latter. Unnecessary detail is avoided, and as a result the march of events in Switzerland as a whole presents itself clearly. Readers too hurried to peruse the book from cover to cover may choose any single topic in which they are particularly interested, e.g., railway construction, the army system, foreign relations, or party struggles, and with a minimum of time and effort follow it through the entire period from the adoption of the federal constitution to the present date. Five maps, a splendid index, and a table of principal events add greatly to the value of the work. At every turn one notes the shrewdness of Dr. Fueter's analysis of party motives, and of the motives of groups behind the parties.

For the benefit of American readers, the book deserves speedy translation; they will appreciate the author's occasional references to our own political practices as contrasted with those of the Swiss—particularly such distinctions as those drawn between log-rolling in our legislatures and the nearest approach to anything of the sort in cantonal grand councils and the Federal Assembly at Bern.

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Emperor Francis Joseph of Austria. BY JOSEPH REDLICH. New York: The Macmillan Company. 1929. Pp. xx, 547.)

Austrian War Government. BY JOSEPH REDLICH. (New Haven: Yale University Press. 1929. Pp. xii, 175.)

The Balkan Pivot: Yugoslavia. BY CHARLES A. BEARD AND GEORGE RADIN. (New York: The Macmillan Company. 1929. Pp. viii, 325.)

The appearance, in relatively close succession, of three such scholarly volumes as those under review is a gratifying evidence of

the interest that centers today on European, even Balkan, matters. That they contribute much of value to an understanding of a century of Danubian and Balkan political development goes without question: the preëminently qualified position of the authors is in itself a preliminary guarantee. Of major importance are the freshness and vitality of the viewpoints which the authors bring to their respective problems, and the way in which an amazing complexity of events covering a period of catastrophic change is set forth with objectivity and clear perspective.

Emperor Francis Joseph of Austria is more than a biography. Professor Redlich has made a profound analysis of Austrian social, political, and constitutional development, from the formal abolition of the Holy Roman Empire to the beginnings of imperial dissolution in the Dual Monarchy. He has, in reality, given us a "Life and Times" volume that quite transcends, in its breadth of scope, a work of pure biography. In it he has caught the *Zeitgeist* of the old Austria of pre-'48 days, shown its gradual transformation into the militarized authoritarian state that was the ideal of Schwarzenberg and Francis Joseph, and depicted its irretrievable decline. In it are found the moving spirits of Russia, France, Germany, England, and Italy from Sebastopol to Serajevo—not merely the immediate entourage of an emperor. There emerge from its pages not only the pillars of the old régime but also the "under-dogs"—the leaders of the oppressed nationalities whom no amount of autocracy, no measure of authoritarianism, could subdue. This is not to say that the many-sided personality of Francis Joseph is in any sense submerged; in reality, his imperial position furnishes the primary thread of continuity for the tangled skein of events which the volume so tellingly describes. But throughout, "with Francis Joseph, the idea of the ruler overpowers that of the man and makes his personal individuality its servant." It was this conception of his mission to rule, of the Habsburg *Hausmacht*, that made Francis Joseph efface his personal desires on many an occasion and take with a remarkable fortitude and utter calm the tragic blows which History rained upon him. Even his first words on learning of the assassination of Franz Ferdinand "show that always the first element in his thinking and feeling was the hereditary house, the dynasty and the God-ordained "order of legitimacy" on which it rested.

What caused inevitable tragedy for Francis Joseph was the inherent conflict between his life mission, as he conceived it, and the on-

sweeping forces of liberalism, nationalism, and democracy that gradually undermined his position. He had neither the inclination nor the genius to attempt a reconciliation with these forces such as would, by compromise and devolution, have maintained his realm intact. "A creative application of modern ideas to the old Habsburg conception of the realm of the peoples of the West and East lay beyond his mental scope." The maintenance⁵ to the end of his life, by sheer force of will, of an obsolete autocracy constituted his principal achievement and led to the primordial tragedy of the World War and its consequences for the peoples over whom he ruled.

That tragedy, in all its details, forms the theme of *Austrian War Government*, a volume which amply merits its place in the Carnegie Endowment's *Economic and Social History of the World War*. If the biography of the Emperor is the incarnation of the personal forces operating in Austrian society, the study of war-time administration is a masterly corroborative interpretation of the impersonal factors leading to the downfall of the monarchy. Redlich's approach is that of a liberal constitutionalist, opposed to dualism—particularly as exploited by Tisza—and sympathetic with the strivings of the various ethnic groups within the monarchy which had long been denied genuine freedom of expression, or real participation in its political life. In consequence, he views the repressions which war government added to the lives of such peoples as inevitably accentuating the long-obvious internal weaknesses of the Austrian state. Of all the belligerent states, Austria appears to have been foremost in its preparations for repression and the first to establish an anti- and un-constitutional régime of out-and-out military dictatorship, well epitomized in Conrad von Hoetzendorf—and Stuerghk. It was this régime of scarcely mitigated political terrorism that lasted during the first half of the war, hampering the splendid volunteer coöperation of all races in measures for war relief.

With the assassination of Stuerghk, the death of Francis Joseph, and the accession of Karl, a second phase opens, outwardly evidenced by the return to something like constitutionalism and the discussion of vague plans for federalization. On the other hand, the growing evidences of war weariness and of the effectiveness of emigré propaganda characterize it as a period of incipient dissolution. It is apparent that revolution and the final collapse of the monarchy were due more to the *malaise* born of the hunger blockade and the failure of the food supply than to the matured and seasoned growth of a belief in the efficacy of republican government and democratic institutions.

That collapse did not come sooner is largely attributable to the far-reaching efforts of the food administration and to the general state socialism forced upon the monarchy in its hour of extremity. These phases of war government receive particularly fine treatment at the hands of Dr. Redlich. When collapse finally took place, it was the Austrian bureaucracy, coöperating earnestly with Hussarek and Lammasch, that compassed the peaceful liquidation of the monarchy and smoothed the way for the incoming administrations of Czechoslovakia, Poland, Rumania, and Yugoslavia.

The chapter of imperial history which Redlich closes opens the epoch covered by *The Balkan Pivot*. The work of Professor Beard and Mr. Radin rightly bears as its sub-title "a study in government and administration." Undertaken on the ground, without preconceived thesis, it is objectively rooted in the institutions then normally functioning in Belgrade. It covers with adequacy and scientific precision the constitutional inheritance, ideological equipment, and institutional endowment of the Yugoslav state. The sympathetic insight of the authors in their description of internal policy, reinforced by repeated and striking parallelisms between Yugoslav and American or British constitutional practice, makes easier for the average reader an understanding of the complexities of Balkan constitutionalism as illustrated in the keystone, pivotal state. The authors have definitely penetrated behind the formal externals of Yugoslav institutions and have touched to the quick every phase of party functioning, national and local administration, with frank, keen, and unsparing criticisms of both political and administrative defects. The proclamation by King Alexander of a dictatorship—an event which transpired after the completion of the volume—did not come as a surprise to the authors; in a prefatory note they characterize the present régime as "the outcome of methods, conditions, and events" described in the work. The breakdown of parliamentary institutions was clearly foreshadowed.

The chapter dealing with foreign policy is—under the necessity of great compression—rather sketchy, and much the weakest part of the book. To judge Yugoslav foreign policy solely in terms of the balance of power is to ignore the achievements of over a decade in international government and regional political and economic coöperation. Twelve lines to the Little Entente and no mention of the activities of the League of Nations, as regards either Albania or minorities, cannot convey the impression of either adequacy or recognition of realities. It seems regrettable that after such penetrating objectivity in other

matters the authors should depart (pp. 320-321) on vague hypothetical conjectures divorced from contact with actualities in foreign policy.

These three volumes cover a cycle in Danubian government. They show the handwriting on the wall for the Austria of autocratic dynasticism, record the painful partition of empire, and depict for a new state the strenuous process of re-forming dynastic allegiance and cementing administrative structure.

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Quantitative Methods in Politics. BY STUART A. RICE. (New York: Alfred A. Knopf. 1928. Pp. xxii, 331).

In his preface, Professor Rice makes it clear that the weight of this book is not to be found in the data presented, the majority of which have already appeared in some published form, but rather in the virtually new context surrounding them. The author has endeavored "to organize the book in such a way as to evidence the conceptual coherence which binds together the various topics." This statement justifies one in beginning by reviewing with considerable care the conceptual background, which is treated in the first four chapters.

Although, speaking historically, "politics" is as ancient a field of thought as any other, political science as a special branch of the social sciences at present is in a formative period. Any treatise, therefore, which deals with method must be received with the greatest interest. Yet caution against enthusiastic acceptance of new suggestions is necessary, because the future development of political science may be considerably retarded by the rash adoption of new methods and the consequent confusion of subject-matter which it inevitably entails. Our only safe guide is insistence upon results relevant to the problems of our science.

With Hume, Mr. Rice asserts that "belief in the existence of any material thing remains an inference." He goes on to say that "belief in the existence of group relationship is of the same character. It is an inference, based upon a variety of sense impressions concerning the behavior of individuals who are involved." The implication of behavioristic psychology is an insufficiently tested hypothesis in the allied field of psychology. Does it recommend itself as the foundation for political science? An examination of the results obtained with this hypothesis will give the answer.

The reviewer cannot agree with the author's assertion that "the efforts to obtain more exact numerical measurements of social phenomena, and to employ these in scientific reasoning, does not necessitate a depreciation of other, non-quantitative efforts to arrive at truth." If they depend upon a behavioristic psychology or a pragmatic philosophy, they do. If, on the other hand, the point is that "there is no inherent reason why statistical method should not have similarly extensive application to politics" (as to economics), the argument is shifted to another ground. For the word "method" is now used in a different and much more limited connotation, namely, that of a research technique. Still, Mr. Rice's own work shows that the statistical method would not have similarly extensive application to politics as to economics. A critical analysis of some of the results obtained by the author will, on the one hand, indicate the significance of statistics as a research technique in political science, and, on the other hand, it may bring out certain points which will aid in deciding whether to accept or to reject the behavioristic hypothesis.

The first set of problems to which the author turns with his statistical equipment is the content and statistical distribution of attitude. It is essentially a study of certain aspects of public opinion; but the author prefers "to avoid the use of the term 'opinion' and to use instead the word 'attitude,' as indicating a disposition or set toward behavior without reference to the degree of rationality that may be present in connection with it." He begins by describing a class-room experiment in which a group of students were asked to classify at random a selection of photographs under certain heads, like "manufacturer," "senator," and "bolshevist." From the scattered distribution of classifications, the author draws the following "more general conclusions": (1) the existence of common stereotypes concerning the appearance of various classes of persons is clearly indicated; (2) the stereotypes found among students and grange members were similar, but there appeared to be a somewhat greater uniformity among the latter.

Now what makes a clear appreciation of the available evidence, and therefore the validity of the "method," most difficult is the obvious truth of the first conclusion. However, brief consideration will show that the percentages given to any one face in the group depend upon the percentages given to any or all of the other faces. The votes are interdependent variables; and the position of Premier Herriot, when known as such, is not only influenced by the knowledge of his identity,

but by the knowledge of the other identities as well. It is a comparative, not an absolute, rating. How many or how few "stereotypes" were actually operative does not appear. The same consideration invalidates the other "conclusion." The author himself considers this analysis, even as a study of stereotypes alone, to have been "fragmentary and incomplete."

His next case deals with the distribution of individual political attitudes. It is not possible to give a detailed description and criticism of all the material in it, some of which is a rearrangement of the article "The Measurement and Motivation of Atypical Opinion in a Certain Group," by Floyd H. Allport and D. A. Hartman, which appeared in this *Review* for November, 1925. The case is concerned with scrutinizing the hypothesis that the attitudes upon a given question of individuals in a given group are distributed normally. On the whole, the author "is still inclined to believe that there is 'something in' the hypothesis that individual attitudes are distributed normally, *apart from some distorting situation.*" Mr. Rice believes that this would have important implications, and I agree with him. "If normality of distribution be established as an ideal situation frequently approximated, there would be practical and theoretical implications. To cite one of the former, it could be shown that movements for political reform are more likely to succeed when proceeding step by step than when presenting their complete program."

Nobody can doubt that these and other implications would be most important if the truth of the assumption of normal distribution could be established. But if one comes to realize that the relation of individuals to any specific value is entirely a function of their relation to other, and not necessarily rationally related, values, one naturally becomes quite sceptical of the possible future results of such experimental inquiry. Mr. Rice himself writes that "if the distribution is not normal, it is because the factors determining individual attitudes are not numerous, equipotent and independent." But when are the factors determining individual attitudes ever independent? And yet Mr. Rice hopes that "it might still be possible to discover the 'circumstances which produce normal distributions.'" Frankly, the reviewer is at a loss to see how that is going to be done, when normality is an unattainable ideal. And even if it could be done, is there any hope that the context within which the abnormality occurred would ever recur under politically relevant circumstances?

The reviewer believes that an attempt to calculate the range of indeterminateness would have disclosed an almost hopelessly large probability of error. At present there seems to be no prospect of narrowing this range. But a review of this length hardly offers the occasion for going into the details of these statistical problems. I might mention, in passing, that some of the difficulties encountered are related to those pointed out in connection with the last chapter. The several intermediate attitudes strung out between two extremes present interdependent alternatives, i. e., each individual attitude may be determined, not only by the particular alternative which it chooses, but by all or several of the others which it does not choose. Yet, what is the situation for each individual, will remain indeterminate. But if that is true, must it not be concluded that any particular assortment giving a certain curve of distribution may be altered in such a way as to give an entirely different curve of distribution?

The next field of inquiry toward which Mr. Rice turns concerns objective indexes of subjective variables. He believes "a search for behavioristic materials representative of the intangible subjective elements of political activity" to be "one of the main tasks of a quantitative science of politics." This is because "attitudes and motives," while offering a valid subject of scientific inquiry, are not susceptible of quantitative measurement" unless "they find expression in behavior." This leads him to a consideration of the vote as an objective index of subjectively varying attitudes. The author is careful to emphasize the necessity of being constantly on one's guard "to devise indexes suited to the purpose in hand." The reviewer is less hopeful than the author about the usefulness of votes as indexes of political attitudes, as far as general and recurring situations are concerned. He again would tend to emphasize, rather than to minimize, the range of indeterminateness which is involved in this kind of "measurement."

Moreover, whenever a situation arises in which the interpretation of the vote is fairly clear, the conditions are likely to be peculiar rather than usual, and the result is therefore of individual rather than of general validity. The author thinks that votes "provide the closest analogy within the field of politics to the monetary unit in the quantitative analyses of economic statisticians." The reviewer does not believe that the analogy is very close. But an elaboration of this statement would obviously involve an extended discussion of economic and monetary theory for which this is not the place. Suffice it to re-

call the exchange aspect of money which gives each unit that detachment from all specific values which enables it to become a standard of value itself. This detachment is at present completely lacking in votes; each vote is individualized, and therefore filled with specific, though indeterminate, content of values attached to the specific person possessing the vote, without which the vote is worthless (except where votes are bought and sold, and there the relation to attitudes breaks down altogether.)

Scepticism regarding the significance of the vote as an objective index of subjective variables beyond a once-occurring situation will find support in the very case which Mr. Rice cites from his study of *Farmers and Workers in American Politics*. No counting of votes can absolve us from evaluating the totality of a given situation which in its relevant aspects does not necessarily contain a recurring quantitative distribution. On the other hand, no political scientist would even have seriously denied that statistical data often give valuable aid in such an evaluation. That there are many situations for which the further application of statistical data will be valuable, the reviewer firmly believes. He is inclined to think that the main contribution of Mr. Rice will eventually be found to lie in this direction, rather than in that "toward a philosophy and a unity of method in social politics" (p. 307). The usefulness and thoroughness of work of a pragmatic and technical significance along these lines will be greatly improved by accepting the standards indicated, the major problems of political science, as generally recognized.

It would be interesting to go on reviewing critically the remaining chapters of this stimulating book, which deal with the social density of attitude and its distribution, spatial variations of political attitude, the voting behavior of representative groups, and time variations in political attitude. But since we focused attention in the available space upon what the author has declared to be the major purpose of the book, namely, to lay the foundation for a quantitative science of politics, we must content ourselves with saying that the remaining chapters do not alter the fundamentally critical conclusion which the reviewer has reached with regard to that major purpose of the author, although it is only fair to say that they contain many interesting suggestions for a further development of political statistics.

The predominantly critical tone of the present review must certainly not be taken to indicate a lack of interest or appreciation on the part of the reviewer. He considers the book of Mr. Rice one of the most

important among recent publications in political science. It courageously attempts to give voice to a suppressed longing of many among us for a truly "scientific" science of politics. While it is not probable that a truly "scientific" science of politics will be quantitative, Mr. Rice has rendered a genuine service by attempting to explore this possibility. Moreover, he has indicated new and suggestive possibilities for the employment of statistical data in the evaluation of specific situations.

CARL JOACHIM FRIEDRICH.

Harvard University.

The Struggle for the Freedom of the Press: 1819-1832. BY WILLIAM H. WICKWAR. (London: Geo. Allen & Unwin. 1928. Pp. 325.)

This thorough account of the development of English press law in the period before the first Reform Bill is the outcome of the author's researches at the University of London. The opening chapter contains a useful survey of the legal situation at the beginning of the nineteenth century, with a very careful summary of the law of criminal libel, whether defamatory of individuals, obscene, blasphemous, or seditious; an account of the firm control of the press, otherwise than through prosecutions, by means of stamp taxes and registration of presses; and a sketch of the actual practice in libel prosecutions. Nothing could better illustrate Maine's principle that the history of substantive law is secreted in the interstices of procedure. The actual definitions of criminal libel were changed very little when the press became free. Lord Campbell's Libel Act of 1843 merely made truth a defense for defamatory libels if it was for the public benefit that they should be published; and it may be surmised that this legislation would have afforded little protection to the agitators of 1819 if it had then existed, for the juries and judges of that time could easily have decided that abuse of the Prince Regent was in no wise necessary for the public good.

Sounder explanations of the acquisition of liberty must be found in the disappearance of the practices of instituting prosecutions without indictment by a grand jury; imprisoning the accused before trial in default of high bail to assure not only appearance for trial but also "good behavior," i.e., the absence of more distasteful publications; the issuance of warrants by justices of the peace; packing juries; the payment of heavy costs by the accused, even if acquitted or never

tried. Equally important was the complete change in attitude on the part of officials and jurymen. The very political reforms which were secured through the courage of the radical press ended the fear and intolerance which had caused the prosecutions. It was the converse of the usual vicious circle.

Subsequent chapters deal with "The Press and the Reform Crisis, 1819"; "The Struggle in the Country, 1819"; "The Struggle in Parliament, 1819," covering the notorious Six Acts; "The Failure of the Government, 1820"; "The Failure of the Government's Supporters, 1820-22," narrating the futile efforts of a reactionary society for informing and prosecuting; "The Triumph of 'Free Discussion', 1822-25," telling the amusing story of how, as each successive vendor of Carlyle's pamphlets was imprisoned, a new volunteer took charge of his shop, until at last it was rumored that an automatic vending machine had been installed. "The March of Mind" contains some material useful for literary history on the refusal of the courts to protect the copyrights of Shelley and Byron because of the blasphemous qualities of "Queen Mab" and "Cain." This judicial encouragement to the cheap circulation of banned books has been lately paralleled in this country with respect to the pirating of Joyce's "Ulysses" and Lawrence's "Lady Chatterley's Lover." Indeed there was a time when our courts denied protection for dramatic rights in *The Black Crook* on the ground of indecent exposure!

The final chapter, "The Conclusion of the Struggle, 1829-31," illustrates the persistence of the habit of repression through changes of governments. The Whigs applied suppression to rural agitators, even as today we see the Labor cabinet excluding Trotsky with a rigor worthy of "Jix." Many more parallels are supplied by Mr. Wickwar to recent intolerance in England and the United States, which renders his book especially opportune. Although the common-law crime of seditious libel is virtually non-existent in this country, the gap has been more than filled by our legislatures, and the prison sentences of ten or twenty years imposed under our syndicalism and anarchy acts would have staggered even Sidmouth and Best, who were content with a year or two during the far more serious agitation of their time. And if we always re-read the history of the last years of rotten boroughs and unrepresented great cities with renewed surprise that such an absurd system should have survived attack so long, we can find the explanation if we look at the over-representation of rural upstate New York, the Rhode Island state senate, and the refusal of the Illinois legislature since 1901 to make a decennial reapportionment.

Mr. Wickwar's book lacks the readableness of Spencer Walpole's account of his period or of Brown's picture of "England During the French Revolution." His minuteness prevents unified impressions. On the other hand, it will be of much service to students in his field. The consultation of documents has been very extensive. Some suppressed pamphlets not in the British Museum have been unearthed by him in the Home Office, to which they were sent by informers. The references in the foot-notes are very full, and appendices contain figures of press prosecutions year by year, and also bibliographies. The index might be enlarged somewhat to include sub-heads and references to legal conceptions, such as "Truth, as defense in libel." Otherwise, everything that one needs on the subject of the book is here.

ZECHARIAH CHAFEE, JR.

Harvard Law School.

The Development of European Law. BY MUNROE SMITH. (New York: Columbia University Press. 1928. Pp. xxvi, 316.)

The publication of this course of lectures by the late Professor Munroe Smith contributes to filling a long-standing need. For students of government, it presents the best brief summary in English of the transformation of political institutions in the illuminating period of change between the fall of the Roman Empire and the rise of the modern nation-state. For students of law, it emphasizes on practically every page the reciprocity and interdependence between law and the governmental mechanism through which law is administered. While remarkably concise, it is not an elementary compendium of dates and names, but a philosophically conceived essay which raises most of the fundamental problems on the border-line between law and politics, and illustrates them by data from a period rich in illustrative material. It is a welcome addition to the relatively few books which deal with law from the angle which concerns students of politics, and with politics from the angle which should concern students of law. It is not so much an outline of legal history as a contribution to the *rapprochement* between law and political science, and an illustration of the importance of history as the best laboratory of material bearing on the basic problems in both fields.

As an essay on legal history, the book is sometimes dangerously thin. Only the highest points are touched, and for much that the student of private law wants to know he will have to search elsewhere.

As the only survey in existence, however, which attempts to cover the development of the law of Western Europe as a whole, it supplies an initial orientation preparatory to more special studies. The book is not properly a history of law at all but an outline sketch of the interplay between legal and political institutions and the social forces influencing them; and, so conceived, it should be a helpful introduction to the study of legal history. Some points on which elementary material in English is elsewhere difficult to come by are treated with welcome fullness, notably the political and legal development of Spain and the antecedents of canon law.

The absence of footnotes in a work which at every step cuts across the results of scholarly research is to be regretted. This is no doubt a consequence of the fact that the lectures were not prepared by the author for publication. The same circumstance is doubtless responsible for one error and for two statements which are at least questionable. Donellus (p. 272) died in 1591, and he fled from France to Holland as a result, not of the revocation of the Edict of Nantes, but of the Massacre of St. Bartholomew. The better opinion among scholars is that the Assizes of Jerusalem (p. 175) were not a digest of actual decisions, but an ideal codification which probably never was in force. Emperor worship at Rome was not confined to deceased emperors (p. 176).

JOHN DICKINSON.

University of Pennsylvania Law School.

The Western Way: The Accomplishment and Future of Modern Democracy. BY FREDERIC JESUP STIMSON. (New York: Charles Scribner's Sons. 1929. Pp. viii, 391.)

America and Europe, and Other Essays. BY ALFRED ZIMMERN. (New York: Oxford University Press. 1929. Pp. vi, 213.)

The "western way" is the American way. Mr. Stimson, in describing and evaluating it, abandons conventional methods. He is not concerned with the quantitative or structural analysis of our democratic institutions, but with output and result; and, drawing upon an acquaintance with the statute-books that is probably unrivalled, he formulates the aims of American democracy in terms of actual legislation. The original aim, "the only thing desired," was a system of full freedom for the individual. In successive chapters, devoted to labor, property, associations, women, etc., Mr. Stimson seeks to discover

how far that system has been carried out. Although he himself sets great store by liberty—although, according to his belief, “the higher and better life, and finally character itself,” cannot exist without it—he is forced to admit that democracy “is growing quite as indifferent—more so, in what concerns the individual, his life, his activity—as any mediæval or autocratic government to the broad principle of human liberty which it was supposed for all time to secure,” and that it has “definitely accepted the principle of control.” He notes with alarm the growth of centralization and bureaucracy. Centralization “ossifies society, arrests all human progress, destroys character.” In a vast country like the United States it would involve, not only the loss of individual and social liberty, but in the end the loss of political liberty as well. Democracy breeds within its own veins other virulent germs: nationalism, for example, which is a fomentor of discord; hostility to culture among certain religious sects (“our culture shows ominous symptoms of dying at the top”); and Mr. Stimson even asks whether our civilization of contrivances will not end by boring us, and whether the intolerable ennui of life may not drive us to revolt. Such pessimistic observations are scattered through the book. They cannot easily be reconciled with the confident assertion that “government by the people is the only government which Western or New-World people will submit to,” that in it “lies the only hope of the world,” and that “we of the West are finally committed to it.”

In his “Prospects of Democracy”—the longest of the ten essays in his book, and one that now comes before American readers for the first time—Mr. Zimmern expresses a similar confidence. “The survival of democracy is not in doubt,” he says; “. . . political democracy is not a matter of choice but a matter of necessity.” And yet passages occur, over and over again, which sound a dubious note. We are told that democracy is, “*for the time being at any rate*,” in the ascendant; that “if the gulf between democracy and government, between the common man and the conduct of public affairs, is allowed to widen, it is not political democracy alone which will disappear;” and that “*if the democratic system survives* and adjusts itself to new conditions, it will not be because the majority of the world is ripe for it.” Indeed, Mr. Zimmern is not at all sure that democracy can develop appropriate institutions and maintain itself against private power. The new economic system, corresponding to our needs, rests in private hands. With its up-to-date organization, it has an immense advantage over government, which remains rooted in ancient habit. “We conclude, then, that

there is urgent need for institutions such as will enable the public power to retain or recover control over private interest." Mr. Zimmern exposes here a fundamental weakness in rule by the many.

The other essays range about the fields of international politics and education. They are, without exception, admirably done. It may be added that the author has a sincere liking for the United States and a belief in its mission as "a center of internationalism and of the processes of mutual understanding between nations."

E. M. SAIT.

Pomona College.

Democracy. BY EDWARD MCCHESENEY SAIT (New York: The Century Co. 1929. Pp. vii, 108.)

This book is a résumé of the current opinions of the critics of democracy. The author stresses the views of the "higher critics" who have no faith in democracy and doubt the value of popular education as a factor in improving the system of popular government. As presenting "the existing clash of opinions over the fundamentals of democracy and the varying points of view of the more prominent writers," the book is excellent; but it leaves the impression upon the reader that democracy has outlived its usefulness and is destined to pass away.

The author, however, is not oblivious to the influences which account for the views of the "higher critics," and he points out that the satire and ridicule with which these writers treat democracy may be due either to their lack of faith in humanity and an inferiority complex, or to their views on socialism and government which are opposed to the principles of democracy. The group of writers whose opinions are quoted so often in this book have come to look upon most men as fools, basing their conclusions upon intelligence tests which have little scientific foundation. "The supply of fools on this planet," says Durant, "is replenished at the rate of two hundred every minute" (p. 57). And he is not alone in this opinion. May it not be that these writers are suffering from a superiority complex and a lack of knowledge of human nature?

In the author's treatment of the views of those whom he calls the "fundamentalists" he hardly presents an adequate view of their opinions, and he ignores the historical background of democracy and the influence of democratic ideals and principles which had their roots in the American and French Revolutions. Apart from this, the book is well written and has its value as a clear and consecutive picture of the present-day criticism of popular government.

From one point of view, the author seems to discredit democratic government, but from another he quotes with approval the opinions of Mill, Spender, and Russell, who believe that democratic government, with all its defects and failures, is better than either an aristocracy or an autocracy; that in its emphasis upon the personal dignity of man and its consideration for the general welfare, it works better than any other system. "But," says the author, "if we go back to the age of popular revolt and make contact with the realities, we see how hateful the rule of the Stuart and Bourbon kings then seemed. It was arbitrary, corrupt, and inefficient rule. Hereditary succession leaves too much to chance. Bryce observes that since the close of the fifteenth century, when the principle of succession had become well settled, the number of capable sovereigns had been very small, and that we form our opinion by looking back at the exceptions. 'Nothing is rarer,' says Emile Faguet, 'than a firm and intelligent king.' Faguet, though merciless in his arraignment of democracy, proposes no substitute. All he asks is some modification of its machinery. The experiments in Russia and Italy, if he had lived to witness them, would have confirmed his preference for popular government" (p. 99).

With these opinions, the author leaves the case for democracy, and while sympathizing with many of its critics in pointing out the defects of democracy, he shows that in the development of government nothing has been suggested that has any chance of successfully taking the place which the system of popular government at present occupies.

JOHN S. PENMAN.

Cambridge, Massachusetts.

The Mandates System in Relation to Africa and the Pacific Islands.

BY ELIZABETH VAN MAANEN-HELMER. (London: P. S. King and Son. 1929. Pp. 331.)

British Colonial Policy and the South African Republics, 1848-1872.

BY C. W. DE KIEWIET. (London: Longmans Green and Co. 1929. Pp. xiii, 317.)

The British in Tropical Africa: An Historical Outline. BY IFOR L.

EVANS. (Cambridge University Press. 1929. Pp. ix, 396.)

Despite its self-imposed limitations, Miss van Maanen-Helmer's work on the mandates system is the best analysis available in English of the constitutional development, status, and implications of that

system. She has entirely omitted consideration of the Class A mandates, on the ground that "they seem to be irrelevant"—though the British might consider this a somewhat summary disposal of their problems in Palestine—since they are avowedly temporary and might properly, if they had been differently situated, have been treated as national minorities. More important is that she has limited herself to a consideration of the international control aspect of the system, rather than to the changes wrought in the traditional methods of colonial administration. Rightly, no doubt, she is of the opinion that it is too early "to see in detail what difference it is actually making in the government of backward races." A generation or two must perhaps elapse before we are able to measure the full effect of the mandates system; the important point now is to grasp the nature and method of the international supervision which has been established.

In her discussion of the composition, procedure, and competence of the Permanent Mandates Commission and its relation to the other organs of the League, on one hand, and to the mandatories on the other, Miss van Maanen-Helmer has added little to the excellent study of that subject made by M. van Rees, vice-chairman of the Commission, in his *Les Mandats Internationaux*. She has, however, covered the ground thoroughly, and it is well worth while to have a similar, if less authoritative, analysis in English. In addition, she has given an outline of the origin of the system and an appreciation of its effect on international relations. Her general position is that great advances have already been made and firm foundations laid for the indispensable work of "making the welfare and development of native races an international responsibility."

To read Miss van Maanen-Helmer's book in conjunction with such historical studies as those of Mr. Evans and Mr. de Kiewiet adds interest and significance to all three because of the problems, speculative and practical, which inevitably spring to mind. Mr. Evans, in *The British in Tropical Africa*, has made no attempt to add to the existing store of knowledge, but merely to give a more or less concise and readable account of the British share in the partition of Africa, taking as his furthestmost limits the Sudan in the north and Rhodesia in the south. The book was written, according to the author, to "meet the more immediate needs of colonial service probationers." It should be of interest to the wider circle for which he hopes, although it will be of little use to the scholar.

Mr. de Kiewiet's work, on the other hand, is based almost entirely on documentary materials, and to some extent on the hitherto unused correspondence of Sir Philip Wodehouse, governor of Cape Colony from 1862 to 1870, and the private minutes of the secretaries of state for the colonies and their subordinates. It throws new light on the troubled history of South Africa and gives an admirable and well-documented illustration of the virtual impossibility of restraining imperialist expansion once a single foothold has been gained, even though the temper of the times at home be against it.

One is tempted to wonder, when the three books are read together, what success the mandates system, and even the League itself, would have in a period when expansionism is still at its height and colonial administrations are hastily devised to secure and hold new areas in a rapidly changing world. Or is the mandates system, perhaps, fitted only to appear as a stabilizing influence when the pioneering stage has passed? How would the League have dealt with the meeting at Fashoda, and who would have been victor in a clash between the gentle counsels of Geneva and the ambitions of Cecil Rhodes? It may be that Manchuria will give at least a temporary answer. At all events, the full glare of publicity has been turned upon the mandated areas, and we have passed beyond the stage when only the secret archives know what is happening, and when, as recited by Mr. Evans, the officials of the Royal Niger Company could be obliged to enter into a bond of £1000 not to disclose to any outside person "any facts, whether commercial, industrial, scientific, or political, in connection with the government or business of the Company or the districts occupied by the Company."

RUPERT EMERSON.

Harvard University.

The Central Americans. BY ARTHUR RUHL. (New York: Charles Scribner's Sons. 1928. Pp. x, 284.)

Dollars for Bullets. BY HAROLD NORMAN DENNY. (New York: The Dial Press. 1929. Pp. 411.)

Black Democracy. BY H. P. DAVIS. (New York: The Dial Press. 1929. Pp. xvii, 372.)

It is worth while for students of international politics to read these three books. They may not be as thorough or as well documented as the political scientist would wish; but they are written by first-hand ob-

servers who have caught the spirit of the problem with which they deal. Arthur Ruhl is a well-known correspondent and traveller who has paid several visits to the Central Americas. His book is a popular study of the people in these countries, of whom he is quite fond. He states that the most advanced of these countries is Costa Rica. The reason for its progress he believes to be the absence of the "dead weight of an alien and listless Indian population," which other Central American countries have to lift. Salvador, he says, has grown out of the revolutionary habit almost as successfully as Costa Rica. Its army is the best in Central America. Coffee is the crop which animates the existence of both Salvador and Costa Rica, as well as Guatemala. Within the latter country a large Indian population persists, and part of this population lives in a state of peonage.

Mr. Denny confines himself to a study of Nicaragua, a country which he studied on the spot as correspondent for the *New York Times*. His fundamental contention is that the policy of the United States toward Nicaragua is dominated by strategic rather than financial considerations. The fear of the United States has been that an unfriendly Nicaraguan government would give some power other than the United States the right to build a canal that would threaten the economic and military position of the Panama Canal. To forestall any such possibility, the United States feels obliged to maintain in office in Nicaragua pro-American governments. The result has been that these governments have usually been so weak that they have remained in power only by the aid of the American marines. Mr. Denny has written perhaps the best chronological account of the last American "war" in Nicaragua, including the ill-fated attempt to capture Sandino. While critical of many State Department actions, the book does not contain any searching analysis of our Nicaraguan policies, or of the possibility of safeguarding our interests by other means.

Mr. H. P. Davis has written an account of a second country which is the object of American intervention—Haiti. His volume gives the best account, in book form, of the American occupation that has appeared. A former business man in Haiti, Mr. Davis realizes the defects in Haitian political life, and he is conservative in his criticisms of the United States. Nevertheless, he feels that we are now in a muddle in Haiti and that it is necessary to define a clear policy. The marine force should be reduced and the Haitian parliament should be restored. Mr. Davis' book, as far as it goes, appears to be accurate. One wishes, however, that he had probed more deeply into Haitian finance before

the war, and into the alleged activities of the National Bank in creating conditions that provoked revolution. Had he dwelt upon Haitian culture, such as the work of Haitian poets and scholars before the war, he would have given a more accurate picture of Haiti as an independent nation.

RAYMOND L. BUELL.

New York City.

The Governance of Hawaii. BY ROBERT M. C. LITTLER. (Stanford University Press. 1929. Pp. xviii, 281.)

In spite of its pedantic title, this is a good book, well written, thorough, and sufficiently well documented. A word like "governance," even though it has been used before, is not good English, and in any case a word which must be explained should be avoided, particularly in a title.

We have had many studies of British and French colonial government, but this is the first time, so far as I know, that a serious study has been made to explain objectively an American attempt to govern outlying territory. On the whole, we can well be satisfied with what the United States has done in Hawaii. Probably no other nation, faced with a similar problem of mixed nationalities—the governing race being hopelessly in the minority—faced also with the fact of distance and inadequate communication (at the time of the Organic Act there was no cable to Hawaii), would have dared give such a large measure of self-government.

That the policy has been strikingly successful is due to more than one factor. The Organic Act itself was a good piece of work, in spite of the criticisms that can easily be made. The transfer of sovereignty was not really a shock, because for seventy-five years the islands had been absorbing American ideals and had become used to American customs in matters of administration as well as of living. For three years after annexation, Hawaiian laws prevailed, and during those years the men in control, Americans of Hawaiian birth, trusted by all classes, were preparing gradually for the change. On the whole, the Federal Government has made good appointments to local offices. With one exception, the governors have been bona fide residents. All this has gone to create confidence, and confidence has oiled the wheels of government.

Mr. Littler points out at the beginning that the business and social structure of the islands is built around the sugar industry. "Hawaii is

thus a territory with a very strong and powerful propertied class and a very numerous and heterogeneous non-propertied class," with but a small middle class. Yet there has been no suggestion of an oligarchy, due partly to tradition, partly to the basis of law, and partly to the political idealism of the property owners themselves. On this background the author has explained the different phases of government, executive, legislative and judicial, the influence of the races on the government, party politics, the work of conservation, health and welfare, education. He does not minimize the difficulties nor fail to give credit for the admirable overcoming of those difficulties. One might wish for a little more constructive criticism, suggestions of remedies for deficiencies. Comparisons with similar attempts elsewhere might have been illuminating. But this, after all, would have destroyed the expository nature of the book. The volume is not a plea; it contains nothing controversial. It gives the facts on which the lawyers and the politicians can build their briefs. The very recital of these facts is inspiring testimony as to the adaptability of American democratic principles to a territory made up of utterly divergent races.

WILLIAM R. CASTLE, JR.

Washington, D. C.

The Chinese Revolution, 1926-27: A Record of the Period Under the Communist Control as Seen from the Nationalist Capital, Hankow. BY H. OWEN CHAPMAN. (London: Constable & Co., Ltd. 1928. Pp. xvii, 310.)

The Nationalist Program for China. BY CHOA-CHU WU. (New Haven: Yale University Press. 1929. Pp. iv, 112.)

The first of these volumes is a detailed description, by a trained observer, of many of the incidents and conditions current in China in the years 1926-27. The author, an Australian medical doctor connected with hospitals in Teian and Hankow in the province of Hupeh, had an excellent opportunity to study the technique of the Nationalist Revolution as it developed during those crucial years. His account is one of the most dispassionate and complete of any thus far published. In his statements and conclusions he is critical but hopeful.

The part played posthumously by Dr. Sun Yat-Sen as the national hero and the disseminator of the Three People's Doctrines (*San Min Chu I*); the rise of Chiang Kai-Shek; the contributions of Soviet Rus-

sia to the Nationalists in men, money, and arms (including, in particular, the work of Borodin and Galens); propaganda as a factor in the campaign; the split between Chiang and the Russian and Chinese extremists, with the consequent temporary establishment of rival governments at Hankow and Nanking, followed by the official unification of China under the Nationalist government at Nanking—all are discussed with considerable detail.

Of interest to Westerners, equal to that in the internal development of the revolution, is the policy of the spokesmen of the new government toward foreigners and foreign countries. The attack on "British imperialism," the occupation by Nationalist troops of the British concessions at Hankow and Kiukiang, the fiery denunciations of foreign privileges in China and of the old "unequal" treaties, the attacks on foreign property in general, including hospitals and churches—these and other developments offer evidence of a positive nature regarding the future relations of Nationalist China with foreign countries.

Valuable as Dr. Chapman's study undoubtedly is, it is not calculated to give one a comprehensive knowledge of contemporary China. It is notably weak in its lack of background, which is apparently presupposed by the writer. Of the situation prior to 1911 no account is attempted, and only fourteen pages are devoted to the fifteen years 1911-26. The value of the work lies in its detailed account of two significant years which witnessed the advance of the Chinese Nationalists with their Russian colleagues and advisers from Canton to the Yangtze valley and the foundation of a revolutionary government in the heart of China.

The small volume by Mr. C. C. Wu should be read in conjunction with such a work as Dr. Chapman's. Mr. Wu is a diplomat, the son of a diplomat—the late Dr. Wu Ting-Fang—and now represents his country at Washington. He preceded Mr. Eugene Chen as minister of foreign affairs in Canton before the Nationalists advanced to the North. Prior to that, he enjoyed an enviable reputation as mayor of the city of Canton.

During the summer of 1928, Mr. Wu attended the Williamstown Institute of Politics, where he delivered two lectures on the meaning of Dr. Sun's Three People's Principles, and "passed remarks" in two conferences on Manchuria. The "remarks" are characterized by as considerable a degree of warmth as are the lectures by diplomacy. The latter bear about the same relation to the realities of life in China that

such general statements of principle as the Declaration of Independence, a Republican party platform, or the Thirty-Nine Articles, bear to life in the countries which produced them. They are, however, couched in good English and are well worth reading. An appendix of considerable value includes Dr. Sun's will; the organic law of the national government; certain statements by Messrs. Frank B. Kellogg, C. C. Wu, and C. T. Wang; and the tariff treaty of July 25, 1928, between China and the United States.

HARLEY FARNSWORTH MACNAIR.

University of Chicago.

Nationality; Responsibility of States; Territorial Waters: Drafts of Conventions Prepared in Anticipation of the First Conference on the Codification of International Law, The Hague, 1930. (Cambridge: Harvard Law School. 1929. Pp. vii, 399.)

When the League of Nations decided in 1924 to proceed with the formulation of international law, the Committee of Experts for the Progressive Codification of International Law determined to identify those subjects which were "ripe" for the purpose. They thus followed the dictates of common sense, and also the precedent of the Hague peace conferences, which did exactly the same thing despite the post-war attempts to exaggerate their results into a general codifying orgy. General codification is impossible, and will remain so until much larger bodies of specific agreement exist than are now available. The three subjects examined in this book are the first to be assigned to diplomatic decision in a conference, but eighteen more have been or are to be studied. When these subjects were declared "ripe," a Preparatory Committee for the Codification Conference issued a "schedule of points" on each, and, altogether, thirty-one have answered that questionnaire with respect to their law and policy.

The Harvard Law School organized the Research in International Law with a view to contributing to the material available to the conference reasoned statements of the law on each subject developed in the free atmosphere of scientific exploration. Manley O. Hudson was director of the research, and the reporters of the three subjects were Richard W. Flournoy, Jr., Edwin M. Borchard, and George Grafton Wilson. Their work was done in collaboration with an advisory committee of forty-four scholars and jurists, of whom about half served on the special committees.

The Geneva Preparatory Committee received replies from thirty-one governments on the schedules of points, and have analyzed these in three volumes which summarize the net conclusions in a series of "bases of discussion" for the conference.

The draft conventions of the volume under review and the "bases of discussion" therefore represent proposals in the same stage of development. Either group is suitable as a starting point of the coming conference's labors. The one is a uni-national scientific structure; the other a multi-national deduction from practical experience. A comparison of the two methods throws light upon respective values.

It is satisfying to note that the national scientists and the international analysis are agreed on fundamental principles. But while the American drafts and the international "bases" perspicuously cover the same ground, the handling of ideas is essentially distinct. Consciously, it is believed, the American drafts reflect in content and treatment the practices and theories of the Washington government. To a considerable degree, the result is valuable—for instance, in the careful definition of terms. Again, the American drafts have scientific superiorities, instanced in the clear distinctions presented with respect to territorial waters. Once more, the American scientists have tended to round out the handling of a subject more fully, illustrated by the draft on the responsibility of states for damage done in their territory to the person or property of foreigners.

National scientists, however, should not make international law, though most of it that we have has emanated from their statements. The American draft and the bases of discussion on nationality show the contrast. The United States is an immigrant-receiving state, very few of whose nationals denationalize themselves, though many expatriate themselves. The American draft clearly reflects these characteristics. On the other hand, the world in general is a place where population moves about, creating problems both of immigration and emigration. The circumstance is reflected in the bases. The structure of society accounts for differences also. Adoption, which seldom involves a change of American nationality, is not mentioned in the American draft, but is dealt with in the Geneva bases. The United States is so far from other countries that its coastal waters are much less subject to general misuse than those of many countries with limited coasts and ports and numerous neighbors. The bases of discussion are more detailed on the use of coastal waters.

In some instances, knowledge of national institutions militates against sound conclusions, or at least contributes to a conviction that they may not be practicable. Municipally, the Supreme Court of the United States renders decisions final and without appeal; internationally, there is no sound reason why they should have that finality *ipso facto*, and no real reason at all why they should not be reviewed by international tribunals in cases of international reclamation. The practical international rule should be Article 32 of the General Act of Geneva of September 26, 1928. The American scientists do not adumbrate the point in their articles on responsibility of states, but the Preparatory Committee finds that agreement can fairly easily be secured on a proposition that "a state is responsible for damage . . . as the result of the fact that . . . a judicial decision which is final and without appeal is incompatible with the treaty obligations or other international obligations of the state."

The very differences between the American and international proposals demonstrate the value of the activity of the Research in International Law. The Codification Conference can reach better decisions with more certainty as a result of having these suggestions before it.

DENYS P. MYERS.

Boston, Massachusetts.

Executive Agents in American Foreign Relations. BY HENRY MERRITT WRISTON. (Baltimore: The Johns Hopkins Press. 1929. Pp. xii, 874.)

◊ In President Wriston's study the high level of scholarship and distinction heretofore set by the successive published volumes of the Albert Shaw lectures at the Johns Hopkins University is amply maintained. We have herein a comprehensive and thoroughly documented description and analysis of a phenomenon of great theoretical and practical importance in American political life.

That phenomenon is, of course, the employment by the President of diplomatic representatives to act for the United States without submitting the appointment of such agents to the Senate for its approval, in spite of the constitutional provision requiring such approval for appointments of "ambassadors, other public ministers, and consuls." The problem is examined by the author from the point of view of constitutional law and practice (Chapters I-IV), and then with reference to the work actually performed by such agents (Chapters V-XI). There

is a full index, but no general summary except for three paragraphs inserted at the end of Chapter xi.

One of the most interesting revelations which emerge in the survey of this long struggle between the executive and legislative branches is the extent to which it has been merely a struggle for power, without much devotion to the ideal of constitutionalism or to the principle of control over foreign relations by the elected representatives of the people, apart from that struggle. Beyond this, the contest was a contest in logic-chopping, even where the most serious and fundamental considerations were invoked. Doubtless the same implications would emerge from a similarly thorough study of executive agreements, although in the nature of the case the President is at greater disadvantage in that matter.

The formal merits of this study have been indicated already; it is founded upon wide and deep work in the sources of information upon our constitutional, congressional, and diplomatic history and practice. On the substantive side, it demonstrates the striking victory of the executive over the Senate, or over the Senate and also the Constitution as intended by the framers. The constitutional requirement for confirmation has been by usage confined to resident diplomatic representatives in foreign capitals, an interpretation both lacking in logic and constituting in effect a great surrender in power on the part of the Senate. This surrender is traceable to the tactical advantage enjoyed by the executive in any such contest, in part to an appreciation on all hands of the unwisdom of the constitutional requirement, and in part to popular indifference.

President Wriston has in one or two places fallen victim to the very logomachy which he so ably exposes, as at the very end of the chapter on congressional opinion (pp. 311-312). There seems to be some rather faulty classification and duplication of materials in Chapters v-xi, and the notes on pp. 601-618 and pp. 825-837 might have been carried down to date instead of being left standing as of 1924. But the suggestiveness and competence of the treatment as a whole are too great to render such defects of decisive importance. This is an excellent book on an important subject.

PITMAN B. POTTER.

University of Wisconsin.

Aërial Bombardment and the International Regulation of Warfare.

By M. W. ROYSE. (New York: Harold Vinal, Ltd. 1928. Pp. xv, 256.)

In this presentation of a controverted subject in readable form Mr. Royse has performed a distinct service to the student of international law and to the general reader interested in national defense. The vast majority of us are prone to slip into the easy rut of optimism and too great faith in the sportsmanship of nations. It is an error, too often stated, that nations are but a magnification of the personality of their citizens. Nations have no heart, and sentiment is not in them, when they gather about the conference table. One predominating urge has always been present in the past and will continue to be present in the future—that of nationalistic advantage.

The author, in his scholarly method of presentation, supported by copious notes and references, follows the thread of international attempts at curbing the employment of new weapons in conflicts between nations to the inevitable conclusion that aërial bombardment, like the cross-bow, the musket, the submarine, etc., will be judged solely upon a utilitarian basis. Those weapons which have been inefficient or contain boomerang qualities have drawn unfavorable clauses in conference reports. Those which have given one nation an advantage over others have invariably caused a deadlock which nullified any effort at restriction. We may therefore expect that aërial bombardment—which, by the way, is not restricted by any unanimous international agreement—will be employed in future conflicts unrestricted as to objectives, whether civilian or military, or as to means, whether explosive or gaseous. This is a bitter pill to swallow, but facts cannot be ignored, unless by those resembling the Chevalier Bayard, who, armed with the cross-bow and fatally wounded by a musketeer, still boasted that he had never shown quarter to an enemy found with a musket.

H. J. KNERR (*Major, air corps.*)

Langley Field, Virginia.

The Making of the Constitution. BY CHARLES WARREN. (Boston: Little, Brown and Company. 1928. Pp. xii, 832.)

Using the scholarly work of Professor Farrand, *The Records of the Federal Convention of 1787*, as well as other source materials, and the *Documentary History of the Constitution* issued by the Government

Printing Office, together with an extensive collection of letters and newspaper comments, Mr. Warren has undertaken to describe in a consecutive account how and why the various clauses of the Constitution were framed, with a portrayal of some of the influences surrounding the men who framed the document. The purpose of the author has been to demonstrate the necessity for the Constitution, to give selected letters and papers relating to the work of the Convention, and to prepare a succinct account of the debates on the Constitution from day to day.

Though the work covers, in the main, ground which has been fully considered in available publications, the consecutive story of the sources of every important clause of the Constitution gives an interest and a continuity which is lacking in the bare records of the Convention or in other accounts of its work. The weaving together of the various items considered in the debates of the day into a readable account involves difficulties which the author has surmounted with a considerable degree of skill. Many who cannot examine the records themselves or use the works of eminent historical writers will find of interest and value the story of the Convention's proceedings as told in this work.

The chief criticism of the book arises from the fact that the author's personal views and prejudices are constantly in evidence. As in his other publications on constitutional history, Mr. Warren indicates that it is his purpose to discredit the so-called "economic historians," or those who emphasize the economic factors in interpreting constitutional history. He aims to appear as a champion of the "patriotic Americans" who set about solely to create a government in the interest of the public welfare. Because of these predilections, too much weight has been given in the data presented to the prophecies of disaster likely to ensue under the government of the Articles of Confederation. It is no doubt difficult to present all sides of a movement like that for the Federal Convention, but Mr. Warren follows the usual plan of giving a preponderance of documents or opinions from the point of view of the Federalist, or strong government, party.

It is unfortunate that so much space and emphasis has been given in the extensive quotations to trivial affairs and unimportant gossip, and relatively so little to the discussion of some of the vital economic and political controversies of the time on which much more reliable information is now available. The wearisome repetition of the times and places at which Washington drank tea are inexcusable in a work which purports to be a serious historical treatise. Following these

pages, one would gather rather limited impressions regarding the intricate forces at play in what Davie called "a work of great delicacy and difficulty impeded every step by jealousies and interest." Judging from the inadequate and misleading impressions presented regarding the consideration by the Convention of the council of revision, involving the controversy over judicial review of legislation, the author's judgments and comments on the major issues before the Convention are in certain respects untrustworthy.

CHARLES GROVE HAINES.

University of California at Los Angeles.

The National Civil Service Reform League. BY FRANK MANN STEWART. (Austin: University of Texas. 1929. Pp. viii, 304.)

For nearly half a century (since 1881) the National Civil Service Reform League has pursued a consistent and persistent course for the establishment of the merit system in place of the spoils system. Coming into existence when the latter was in the heyday of its strength, the League waged a campaign on moral grounds which resulted in the passage of the famous Pendleton Act of 1883, which measure has continued on the statute books from that day to this without change. The act has proved to be a very wise piece of legislation because of its susceptibility to expansion and application. Each successive administration has added to the classified service and has strengthened and developed the rules, so that a large portion of the administrative service of the federal government is now under the competitive system.

The League has stood by the Pendleton Act and has never advocated any change in it, although during the years which have passed an entirely new conception of the personnel problem has been developed. Naturally there has been a conflict of views between those who regarded the issue as a moral one and those who regarded it as mainly a governmental one. There has also been a conflict between those who felt that it was the part of wisdom to support and develop a law which had abundantly proved its worth and those who were in favor of enacting new and confessedly experimental laws, embodying the newer theories.

Dr. Stewart has written the history of this oldest of voluntary reform bodies with fairness and discrimination, and has presented in considerable detail, not only the activities and technique of the organization, but the sundry issues (and their discussion) that have arisen from time to time. He has also discussed, with equal fairness,

the prospect of the reform and of the organization. He has done a very good piece of research work. Naturally, however, the personal touch is lacking; and various problems which in their day were important receive practically no attention. For instance, he omits any reference to the work which the League has done in the extension of the competitive system to the dependencies acquired by the United States since the Spanish War, and there are very few, and those very meager, references to the establishment of the system in the cities of the country. One of the important reports made by the League, in conjunction with the National Municipal League, was that on the application of the merit system to the higher municipal officers.

Dr. Stewart's book, however, affords the most satisfactory discussion of this ancient and honorable organization and constitutes a very substantial contribution to the literature on the subject. By far the greater portion of the League's activities have been devoted to federal problems, and these are discussed at length and with intelligence. Moreover, the author has brought out clearly the main points of difference between the older members of the League, who have been identified with it from its inception until the present time, and the younger group of men, who take what may be called the modern view of the situation.

CLINTON ROGERS WOODRUFF.

Philadelphia, Pa.

Karl Marx: His Life and Work. BY OTTO RÜHLE. Translated by Eden and Cedar Paul. (New York: Viking Press. 1929. Pp. 419.)

This is an excellent biography. The style is lucid; the narrative moves with quick tempo; and the translators have done a superb job. Marx's journalistic adventures, the persecutions by the various governments and his repeated exiles, the evolution of his thought-process, his multifarious activities as a leader in revolutionary organization and propaganda, his devotion to father, wife, and children, Engels' beautiful friendship toward him, the tragedy of his career—all this stands in vivid detail, because all is handled with skill, sympathy, and a sense of balance.

The author brings to his task an unswerving faith in Marx's theories. Of this the reader becomes aware before he is through with the first five pages, where the slogans "bourgeoisie," "master class," "proletariat," "surplus value," "exploitation," greet his eye. Consequently

Mr. Rühle hails every view of Marx with enthusiasm. Everywhere Marx solves the problem, makes a discovery, unravels the mystery. Nowhere is there a note of criticism; nowhere an indication of the vexing obscurities, inconsistencies, and contradictions. It may be added that the full significance of the third volume of *Capital* is not brought out adequately.

Marx, the man, does not fare so well. Indeed he emerges before us a very unattractive figure. He is selfish, spiteful, and cynical; he is arrogant, vain, and perfidious. He lacks self-discipline and the ability to earn a living. Inordinately conceited, he surrounds himself only with applauding admirers, and views his doctrines as the emanations of supreme wisdom. Any deviation is to be stamped out with pitiless mockery and fierce contempt. "A violent, quarrelsome, contentious man, a dictator and a swashbuckler" (p. 209), he stoops to base methods in order to revile and discredit an opponent.

True to the spirit of some of the latter-day biographies, our author puts Marx on the psychoanalytical chair, intent on discovering the trouble. He finds that Marx is principally a victim of three conditions: digestive disorders, Jewish extraction, and the first-born child of whom the family expects a good deal. These drawbacks account for Marx's character. They engendered in him an inferiority complex, which in its turn sought compensation in high ambitions and great achievements.

Those not in genuflexion before some of the ultra-modern ways of psychology will not be convinced by these findings. Many people are afflicted with drawbacks, yet they accomplish little; nor are their characters distorted. Human nature is not so simple as all this. Besides, it is not clear why the author calls this method a materialistic (economic) interpretation. Psychoanalysis is rather a biological and psychological interpretation. A materialistic interpretation of Marx's character would seek to show how Marx's economic interests, and especially those of the class to which he belonged, formed his motives, shaped his ideas, and guided his conduct.

In general, the book would have gained had the author been more critical toward Marx's doctrines and less psychoanalytical with respect to his character. But in spite of blemishes, the volume is, to repeat, an excellent piece of work.

M. M. BOBER.

Lawrence College.

Government Ownership and Operation of Railroads. BY WALTER W. M. SPLAWN. (New York: The Macmillan Company. 1928. Pp. xiv, 478.)

The first fourteen chapters of this volume describe the development of the railway net in each country and discuss the political and economic factors entering national policies of ownership, operation, and control. A remarkably comprehensive survey is provided, although there is marked variation in the amount of dependable material obtainable from the various lands. The text is supplemented by railway maps and statistical tables giving recent data. Little attempt at comparative analysis is made, and the author warns that "one will make comparisons at his peril," owing to differences in conditions from one country to another. He is particularly insistent that there is little in foreign experience to justify a change of policy in the United States. One regrets to find that in dealing with Germany, where, if anywhere, there is much to be learned both for and against government operation of a great railway system over a long period, the discussion is not complete and impartial, but is largely argumentative, emphasizing unfavorable aspects almost exclusively.

The last seven chapters deal with the United States, describing successively American experience with state construction of canals, railway history down to the Great War, federal operation of railroads during the war, and private operation since 1920. The author disagrees with Dixon and Cunningham that nothing definite can be proved from the results of federal operation in 1918-19, owing to the shortness of the period and the abnormal conditions which existed. Federal operation was a pronounced failure from the standpoint of efficiency, he maintains, as evidenced by the increase in number of employees, the deficit in the railway budget, and the improvements made by private operators since the war. The final chapters consider the arguments for government ownership, stating them briefly and refuting them with a positiveness and confidence suggestive of a lawyer's brief.

Enough has been said to reveal the chief weakness in the author's method of dealing with his subject. The case for government ownership is introduced only piecemeal as a target for attack. That this is a one-sided procedure is evident even to a reviewer who agrees with the author's contention that a change in our national policy is inadvisable. It may be contrasted with the tenor of a statement in the introduction evidently intended to indicate his purpose: "An effort should be made to submit a discussion of government ownership and operation of rail-

roads which would give desired information, provoke thought, and be as free from prejudice as it is possible for a mere human being to divest himself of bias." The student of railway problems who, reading this declaration, expects to find an objective and well-balanced treatment of the question will be disappointed. The book should be of value to those interested in a vigorous presentation of the case against government ownership and operation, and to those desiring recent information upon foreign railways.

C. E. McNEILL.

University of Nebraska.

The New Exploration: A Philosophy of Regional Planning. By BENTON MACKAYE. (New York: Harcourt, Brace and Company. 1928. Pp. x, 235.)

The thesis of this volume does not find its original enunciation in Mr. MacKaye's work; it has been a good many years since Burnham warned city-planners to "make no little plans; they have no magic." Coming as it does, however, upon the heels of the change in American life from a rural to an urban economy, and the development of great metropolitan regions, the book offers a stimulating and interesting introduction to the problem of comprehensive planning.

The author perhaps unconsciously follows Spengler in his denunciation of the "artificiality" of the great city, and in regarding its hugeness and impersonality as an approach to the "inorganic." It follows that the volume must be a defense of the so-called "natural" environment. The author accepts the machine age in typically Carlylian fashion, but insists upon the provision of an environment which will allow adequate contact of man and nature, and the general contact of man and man possible only in a rural setting. To this end, he proposes a regional city, composed of many small villages, in which a relatively dense population is scattered over an extensive area. The provision of open spaces and the preservation of the primeval setting will thus insure the development of a fully rounded and vigorous life.

The author regards the "metropolitan invasion" as a distinct interruption in the natural order of things, much as was the great glacier. While this view may be correct, there are those who regard metropolitanism, not as an invasion, but as the contemporary phase of the evolutionary process. A debate on this point between the author and Dr. Charles A. Beard would be interesting. There is cogency, however,

in his argument for the reformation of the environment which the machine age has created.

As a plea for deconcentration, the work has hardly the forcefulness of the scientific researches of the New York Regional Plan Committee. Its occasionally hysterical note seriously impairs its scientific importance. From an educational point of view, however, its value is difficult to overestimate. It is improbable that time and circumstance will so conspire as to provide the extreme nicety and over-refinement in the distribution of urban population which the author proposes; at the same time there can be no question but that the urban region composed of a federation of reasonable sized towns and cities is the *grosstadt* of the coming era.

THOMAS H. REED.

University of Michigan.

Governmental Purchasing. BY RUSSELL FORBES. (New York: Harper & Bros. 1929. Pp. xvi, 370.)

This volume is a brief statement of the advantages of centralized purchasing of supplies, materials, and equipment by governments, with an extended, but straightforward, discussion of the most desirable procedures in operation in American communities. There is no philosophical consideration of purchasing or of the vexing problems that scientific purchasing raises. Mention of these numerous problems is not omitted, but always they are discussed in the light of the actual experiences. It is this practical approach that makes the book much worth while to everyone directly or indirectly in contact with public buying.

The early chapters deal with general problems and historical development. The writer then plunges into centralized purchasing as it is—the administration of the purchasing office, illustrated with organization of supplies, governing both use and quality, with the procedure that has been employed in a number of instances for securing these ends; the determination of purchase requirements, including practices bearing on the unsolved question of whether the purchasing department is only an ordering agency or is endowed with discretion in buying; the purchasing negotiations, including the control of emergency purchases; inspection and testing; centralized storage, which is always a matter of controversy wherever purchasing is done; and the accounting control over purchases.

In the appendices are found the best of recommended and existing laws on purchasing; specifications and examination questions prepared for the selection of a purchasing staff for Baltimore, Md.; the procedure followed in the standardization and simplification of supplies for New York State; and similar material, with a selected bibliography on the subject of purchasing in general. Every chapter is illustrated with numerous cuts of typical and most satisfactory forms in use.

To quote Dr. Forbes: "No attempt has been made to recommend a model purchasing system, or to devise model forms for its administration. . . . Instead, the writer has attempted a synthesis of the best existing practices." This the author has done, and done well.

Dr. Forbes has had an exceptional opportunity to collect the data upon which he has built his book. For a number of years he was assistant secretary in charge of research for the National Association of Purchasing Agents. More recently he has been secretary of the National Municipal League, and director of the Municipal Administration Service, as well as lecturer on municipal government at New York University.

LENT D. UPSON.

Detroit, Michigan.

Die Staatsrechtliche Stellung des Präsidenten der Vereinigten Staaten von Amerika. BY FRITZ LINN. (Bonn: Kurt Schroeder. 1928. Pp. 144.)

What the author offers in this study of the constitutional position of the President of the United States is not new knowledge, but the gathering in one little volume of data scattered far and wide in many works on American constitutional law. Not satisfied with a matter-of-fact description of the President's functions, he reveals quite effectively the dynamics of politics which have succeeded in filling a definite form with an entirely different meaning without so much as an attempt at an external change.

There is an outline of the fundamental principles of the American government, showing a fine appreciation of the difference between the formal provisions of the Constitution and their present-day interpretation aiming to meet the changed conditions of modern economic life. The discernment of this tendency and the appreciation of essentials are apparent in the treatment of the historical background of the position of the President and in the discussion of the presidential election,

the President's term of office and the succession, the President as executive head, the President and his functions, the President and the judiciary, the President and the legislature, and, finally, the President as leader.

But though all this is no revelation to the American student, there exists in the knowledge of the reviewer no other recent German study in the field of American constitutional law which would be as profitable for the American student to read. For this little German work is an encouraging exception to the rule that German learned works are unnecessarily difficult to approach from the point of view of construction and style. The clarity of expression and the brevity of the sentences should commend it to the American student of political science and constitutional law as a useful exercise in linguistics as well as in reading in the subject of immediate interest.

JOHANNES MATTERN.

The Johns Hopkins University.

BRIEFER NOTICES

AMERICAN GOVERNMENT AND CONSTITUTIONAL LAW

The second edition of Ernst Freund's *Cases on Administrative Law* (West Publishing Company, pp. xxi, 745) is substantially the same in scope and method as the first. The author has added many cases illustrating the development of administrative law in the last seventeen years and eliminated a few which fall more properly under the head of constitutional law and are generally familiar to students of the subject. He adheres to his original conviction that administrative law can be most conveniently dealt with in a law school as a course on the exercise of administrative power and its subjection or non-subjection to judicial control. The main divisions of the subject consequently continue to be administrative power and action, relief against administrative action, and the finality of administrative determinations. Some changes have been made in the arrangement of the cases, which make for greater clarity in the statement of the law, and in general the volume keeps step with the development of the subject. Professor Freund does not conceal his opinion that administrative law cannot be taught effectively by a case-book alone, and that an entirely different approach is better suited to the needs of students of the science of government. Believing, as he does, that legislation has been an even more important factor in its development than the decisions of the courts, he insists

upon the importance of a comparative^m study of statute law. In this connection he rightly calls attention to his recent work, *Administrative Power over Persons and Property*, the most adequate of the systematic treatments of the law which controls administration in modern constitutional states. The two books together furnish the teacher of administrative law as a branch of government with materials incomparably superior to any heretofore available. A. N. H.

The central theme of *Andrew Johnson, a Study in Courage*, by Paul Stryker (Macmillan, pp. xvi, 881), and *American Reconstruction, 1865-1870*, by Georges Clemenceau (edited with an introduction by Fernand Baldensperger and translated by Margaret MacVeagh, Dial Press, pp. 300), is the bitter controversy waged over reconstruction policy between President Johnson and the radical majority in Congress. Stryker has written a powerful book which may well stand as an adequate defense of Johnson against the vilification of his enemies. The corrective value of the work, however, is seriously marred by its excessive partisanship. In advocating justice for Johnson the author is not always fair to Johnson's opponents. Nor is the hero quite as great as here portrayed. It is well to describe Johnson's career as an "epic of valor," to stress the statesmanlike wisdom of his Southern policy, and to remove the smirch of slander unfairly attached to his name. But it is also necessary to recall that Johnson was vulnerable where Lincoln had been strongest, especially in the manipulation of men, and it was this which caused his downfall fully as much as the machinations of his foes. Stryker has done a necessary and important work, but his portrait of Johnson is not a complete one. The letters which the Tiger of France contributed to the Paris *Temps* during his residence as a young man in America, now collected in book form, have little in them of value for the student of reconstruction. The young and liberal Clemenceau came to our shores heartily in sympathy with the "great emancipating revolution" and quickly fell under the influence of radical propaganda. His judgment was often immature, his approach biased, and his means of observation limited and mostly second hand. The book is chiefly important as a revelation of the inspiration found by the French liberals in the events occurring in America. P. H. B.

M. R. Werner, whose books on *Tammany Hall*, *Brigham Young*, and *Barnum* have attracted wide attention, has written a life of *Bryan* (Harcourt, Brace and Co., pp. viii, 374). Although there is little that is new in the biography, the work is based upon a thorough study of a

mass of information which the author has used with skill to produce a book which is very readable and worthy of careful consideration as an interpretation of the life of the Democratic leader. Some of the chapter headings indicate the author's point of view and method of treatment. The early life of Bryan is told under the title of "The Origin of the Species"; "The Armor of a Righteous Cause" deals with Bryan's free silver notions and the campaign of 1896; "The Silver Tongued Sphinx" narrates his activities in the 1912 convention at Baltimore; "Second Fiddle" tells of his work as Secretary of State; and "The Descent of Man" describes the Dayton fiasco, which was a sad anti-climax for one who had played such an important rôle in American public life. William W. Brewton, in *The Life of Thomas E. Watson* (privately published in Atlanta, Georgia, pp. xiii, 408), has given us a biography of the Populist leader whose life covered almost the same period as that of Bryan and who, by action of the Populist convention in accepting Bryan as their candidate for the presidency, was the "Great Commoner's" running mate on the Populist ticket in 1896. The lives and the ideas of the two men present striking contrasts and some equally interesting comparisons. Both were reformers and interested in the lot of the so-called common people; both liked to be in the thick of a fight; both published political journals. But in their personal characteristics, relations with others, beliefs, and methods there were outstanding differences. The author regards Watson as a greater man than Bryan. "In his leadership he was of a verity the born leader. He retreated not from the urge that was in him. Unlike Bryan, the tool of his party, Watson was the essence, the driver, the ruler of his." Although decidedly partial, Mr. Brewton's biography makes a real contribution by giving for the first time intimate data about one of our most colorful and stormy political figures.

State Budget Control of State Institutions of Higher Education, by O. W. Irvin (Bureau of Publications, Teachers College, Columbia University, pp. vi, 122), is interesting not only because of the factual material which it contains regarding the various types of state budget control over state universities, but more especially because of the technique that has been followed in correlating and interpreting widely different and complicated data. Each step in budget procedure has been given a symbol. For example, the symbol *g* is used to signify the action in the legislature on the budget as reported out of committee. In order to represent the two mutually exclusive possibilities of action at this

stage, the symbol g^1 is used where the legislature is empowered to amend or supplement the budget bill as it sees fit, and g^2 where some restriction is placed by law on the legislature. By the use of such a symbol for each step, it has been possible for the author to present in compact form a composite picture of budget procedure in the various states for comparison and analysis, and to prepare a brief combination of symbols which represents what might be called the "pure executive budget pattern." The study offers some useful suggestions for those interested in the study of comparative administration.

The committee in charge of the Regional Plan of New York and its Environs has issued a booklet, *Zoning Cases in the United States* (pp. 59), prepared by Edward M. Bassett and Frank B. Williams, which should be invaluable to city planners and to students of municipal administration and constitutional law. First, the cases are listed under numerous subject headings, such as æsthetics, bill-boards, board of appeals, procedure, residential district, use, and so on, which are in turn further subdivided for convenience. Secondly, there is an index of cases by states, and finally an alphabetical index of cases. The pamphlet is published as an appendix to Volume VI of the regional survey and is issued in advance, so as to make it available for immediate reference.

F.S. Crofts and Company have brought out a revised edition of Robert E. Cushman's excellent *Leading Constitutional Decisions* (pp. xii, 343). The new cases which are added are : *Olmstead v. United States*, which deals with the problems of search and seizure and the admissibility of evidence gained thereby; *Myers v. United States*, on the President's removal power; *McGrain v. Daugherty*, on the Senate's power to punish for contempt; and *Euclid v. Ambler Realty Company*, in which the Supreme Court upheld a comprehensive zoning ordinance. As in the earlier edition, explanatory notes precede each case. A table of cases reprinted or cited in the volume has also been added.

The Court of Appeals of Maryland, a History (pp. iii, 214), by Carroll T. Bond, chief judge of the court, traces in detail the history of the highest court of Maryland from 1695 to 1867 and also mentions briefly the changes since 1867. Special attention is given to the organization of the court, its procedure, personnel, the important lawyers who appeared before it, and the nature of its business. Judge Bond differs with the opinion of Bryce and others who assume "that under a system

of choosing judges by popular election there must be a falling off in the quality of those chosen, and consequently in respect for the courts and the law which the judges administer."

The Macmillan Company has issued a booklet on *Questions and Problems in American Government*, prepared by Carl H. Erbe (pp. x, 125), to accompany Charles A. Beard's *American Government and Politics*. There are not only questions based on the textbook but also questions and problems for further study and discussion, references to other standard works, and a list of about one hundred and fifty political terms and expressions with which the student should become familiar.

The same company has published a booklet of about one hundred pages on *The Government of Wisconsin*, by S. M. Thomas. The author presents in concise form the salient facts regarding the government of that state, and there are also chapters on the history of the state, local government, taxation, voting and elections, and education, and a copy of the state constitution.

Students of government in New York City and elsewhere will find that *A Guide to the Principal Sources for Early American History (1600-1800) in the City of New York* (Columbia University Press, pp. xxv, 357), by Evarts B. Greene and Richard B. Morris, will be of great service, especially on such subjects as colonial administration and policy to 1763; the Continental Congress; the diplomacy of the American Revolution; the Confederation and Constitution; early state government; foreign relations, 1783-1800; the history of American law; and the judiciary. The volume contains a directory of the principal libraries and other depositories of New York City, a list of public records, documentary collections, newspapers and periodicals, the collected works of early American statesmen, and manuscript collections and the place in which each may be found.

The Rise of the Whigs in Virginia, by Henry H. Simms (Richmond, The Wm. Byrd Press, pp. ix, 204), discusses the views of the Jackson and anti-Jackson parties on such issues as the tariff, internal improvements, the Bank, nullification, slavery, and financial measures during the period 1824 to 1840. The fundamental thesis of the author is "that the principal opposition to Jackson in the state came from conserva-

tive classes, from men possessed of property in slaves and otherwise who refused to accept either his brand of nationalism or his theory of democracy."

Eugene P. Chase, of Lafayette College, has translated the letters which François, Marquis de Barbé-Marbois, secretary to the French minister to the United States during the American Revolution, wrote to his fiancéé. To the translation he has given the title of *Our Revolutionary Fathers* (Duffield, pp. ix, 225). Although dealing primarily with the travels of Barbé-Marbois in America, the volume throws light on social, economic, and political conditions at the time. Professor Chase has written an interesting introduction explaining the career of Barbé-Marbois and his writings.

LOCAL GOVERNMENT

Wylie Kilpatrick has produced an interesting study entitled *County Management: A Review of Developing Plans of County Administration in Virginia and North Carolina* (University of Virginia, pp. 46). Mr. Kilpatrick describes the attempts of nine counties in North Carolina and Virginia to improve their government, especially on the administrative side, through such plans as the limited county manager which is found in Davidson county, the financial clerk or auditor which is found in four counties, the directing engineer which is found in one county, and the popularly elective executive with an appointive auditor which exists in three counties. The author also deals with county and state relations, and in this connection favors coöperative administrative coördination or local adaptation of state policies rather than greater state centralization. For Virginia and North Carolina counties, he rejects the complete county manager plan modelled after the city-manager plan, explaining that the developments in the nine counties surveyed point to the gradual evolution of a county supervisory plan under which general oversight and complete financial control will be vested in the board of county commissioners or supervisors which will have a chief supervisor at the head, a financial supervisor who will act as agent of the board, and functional county boards of education, health, and welfare, which will administer their respective services through expert managers. Mr. Kilpatrick's study has grown out of his work at the Institute for Research in the Social Sciences at the University of Virginia.

City Growth Essentials, by Stanley L. McMichael and Robert F. Brigham (Stanley McMichael Publishing Organization, Cleveland, pp. xxxi, 430), is a complete revision and reorganization of the authors' earlier work on *City Growth and Values*. The book is subdivided into three general sections on "Cities—Their Origin and Growth"; "Cities—Their Real Estate Values"; and "Modern Tendencies in Cities." The emphasis is on purely economic rather than political or social factors. The topics dealt with are too diverse to enumerate in full, but they include such important subjects as factors determining location of cities, types of cities, urban growth, influences affecting areal expansion, streets and highways, the utilization of urban land, topography as factor in land utilization, public transit as a factor in city growth, the basis of land values in cities, suburbanization, racial and national settlements and groupings, social control of land use, zoning, and controlling and directing the growth of cities by proper planning. This partial list of subjects gives some indication of the scope and usefulness of the volume, which, in the opinion of the reviewer, is the most interesting and comprehensive work that has appeared on American city growth, urban land economics, and the relation between real estate and public improvements. The value of the book is increased by the inclusion of about one hundred and twenty-five excellent illustrations, and at the end of each chapter will be found a number of questions based on the text. The book is not, by any means, merely a collection of facts and figures, but it also presents theories, observations, speculations, and fundamentals which are woven into an interesting account. It should be helpful in giving illustrations to the teacher of municipal government, and also furnish worth-while collateral reading for his courses.

The latest addition to the Whitehall series of volumes on the British government departments, published by Messrs. G. P. Putnam and Sons, is *Scotland Yard and the Metropolitan Police*, by J. F. Moylan (pp. xix, 331.) The author, who is Receiver for the Metropolitan Police District, traces the developments leading up to Peel's Metropolitan Police Improvement Bill of 1829, describes the position of the Commissioner of Police and sketches briefly the various occupants who have held that post, discusses state control of the Metropolitan Police District, and explains the detailed organization of the police force, how the police work and live, the duties of the detective force, the Criminal Investigation Department, the Criminal Record Office,

special duties of the police, traffic regulation, and the relation between police and public. He also deals with the recent inquiries into metropolitan police matters, which "have been mostly concerned with questions of policy and procedure," but which have also involved in the public mind at least "something in the nature of a general questioning of police methods and an idea that the relations of police and public are not as cordial as they used to be." The author defends the police against such criticism and points out that the motor car and other developments have placed new burdens upon them.

Outdoor Recreation Legislation and its Effectiveness, by Andrew G. Truxal (Columbia University Press, pp. vii, 219), summarizes the state and federal legislation enacted in aid of public recreation from 1915 to 1927, discusses the connection between city planning and outdoor recreation legislation; and attempts to evaluate the effect of recreation facilities on juvenile delinquency. There is also a helpful chapter on the legalliability of cities in the conduct of outdoor recreation. An analysis of the cases shows that while the courts in a majority of the states regard the conduct of recreation as a governmental function, and have declared cities non-lialie, such a policy is by no means uniformly recognized. The most interesting feature of the study is Part Two, in which the author applies scientific statistical methodology to such environmental factors as child density per acre, racial composition, and delinquency, in order to determine the degree of association between play area and delinquency with special reference to Manhattan. The author concludes that "there appears to be a moderate association between the presence of recreation areas and the absence of juvenile delinquency, provided we have taken into account a sufficient number of the environmental influences."

A sixth edition of Wright and Hobhouse's well known manual on *Local Government and Local Taxation in England and Wales* has been edited by Cecil Oakes and published by Sweet and Maxwell (London, pp. 300). This follows the main lines of former editions in presenting the law on the subject. A new chapter on valuation has been added, to set forth the provisions of the Rating and Valuation Act of 1925; the chapter on housing has been rewritten to include the changes since the World War; there has been some rearrangement of chapters; and some additional matters are dealt with in the "miscellaneous" chapter. Published in 1928, however, this edition does not cover the important changes made during the present year.

Teachers and students of state and local government are constantly confronted with the difficulty of obtaining concise and accurate information regarding state control over local finance in the various states. They will therefore welcome the booklet on *Relation Between State and Local Governments*, issued by the Finance Department of the Chamber of Commerce of the United States (Washington, D. C., pp. 27). This deals with central control over assessments, accounting, auditing, bond issues, and budgets. In conclusion, the question is raised whether there might not be developed a closer coöperation between state and local subdivisions in technical matters.

Al Smith's Tammany Hall (Institute for Public Service, pp. xii, 338), by William H. Allen, director of the Institute for Public Service, is a vigorous attack on the methods and influence of Tammany on New York City and state politics. The author's purpose in writing the book was to shatter the myth that Tammanyism has been reformed, and in this he has succeeded. Based on twenty years of fact-finding, the book is full of first-hand illustrative material.

MISCELLANEOUS

The Oxford Press has published an English translation of *A History of Italy, 1871-1915* (pp. 333), by the famous historian Benedetto Croce. Political developments are given outstanding prominence, and the book is full of material of interest to the student of European governments. The author begins with an introductory chapter on "Political Controversies and Historical Realities in Italy after 1870;" then follow chapters on the period 1871-87 under the titles "Constitutional Adjustment and the Development of National Life," "Political and Moral Life," "Foreign Policy," and "Thought and Ideals." From these topics the author leads on to chapters on "The Revival and Transmutation of Ideals" (1890-1900); "The Crispi Period" (1887-96); "Attempts at Autocratic Government and the Return of Liberalism" (1901-10); "Liberal Government and Economic Expansion" (1901-10); "The Advance of Culture and Spiritual Unrest" (1901-14); "Internal Policies and the Libyan War" (1910-14); and "The Neutrality of Italy and her Entry into the World War" (1914-15). These chapter headings give an idea of the content of the volume and also the author's point of view and method of presentation. The book is as readable as a novel. The translator is Cecilia M. Ady.

From the Ohio State University Press comes a volume entitled *Finland: The Republic Farthest North* (pp. xv, 220), by Eugene Van Cleef. As foretold by the subtitle, special attention is given to a study of the response of Finnish life to its geographic environment. Students of government will be particularly interested in the chapters dealing with agricultural coöperation, the cities of Finland, the history and politics of the country, and the Finn in America. A brief description of political parties is given, and of the issues which divide them, most of which center around economic questions and the conflict of language. The author points out that the Finn, upon his arrival in the United States, migrates usually to Massachusetts or to Minnesota, Wisconsin, or Michigan. He estimates that about one fourth of the Finns in the United States belong to the Socialist party, and that the great bulk of the others align themselves with progressive groups.

The worth and popularity of E. T. Williams' *China: Yesterday and Today* (Crowell, pp. xxiv, 743), which first appeared in 1923, are indicated by the fact that the book has gone through six printings and now appears in a fourth revised edition. The author has brought all of the facts down to the close of 1928, has rearranged the chapters, and has added some forty pages of new material. He points out that as a result of the "changes which have followed one another with kaleidoscopic rapidity" and the establishment of more stable government, the China of today is more than ever unlike the China of yesterday. It is therefore important to study carefully the influences which have made possible "the thorough uprooting of ancient institutions" in a land "so wedded to the past." In his opinion, "China with her vast resources and her industrious population cannot escape the destiny of becoming a great nation." The book is written from a sympathetic point of view and is especially valuable because of the author's long residence in China and close contact with its problems as former chief of the division of Far Eastern Affairs in the Department of State.

The Johns Hopkins Press has published *The Literary Bible of Thomas Jefferson: His Commonplace Book of Philosophers and Poets* (pp. 210), with an introduction by Gilbert Chinard. The book contains quotations from the writings of Herodotus, Bolingbroke, Cicero, Euripides, Homer, Milton, Vergil, and others, which Jefferson copied into a book that Professor Chinard believes was compiled largely during his student days. The work is a companion volume to *The Commonplace Book of*

Thomas Jefferson: A Repertory of his Ideas on Government, published in 1926 by the Johns Hopkins Press. In the opinion of the editor, most of the selections from the Greek authors "reflect the natural disposition of a man who distrusts the masses and takes pride in his birth and in his ancestry," which is one of the reasons for inferring that the abstracts were compiled early in Jefferson's life and before he had formulated his democratic creed.

The addresses and papers presented at the annual meeting of the Academy of Political Science in the City of New York, in November, 1928, have been published under the title of *The Preservation of Peace*, edited by Parker Thomas Moon (Columbia University, pp. xvi, 131). Most of the papers center around the Pact of Paris, more popularly known as the Kellogg Pact. The volume is divided into three parts, on "The Renunciation of War as an Instrument of National Policy," "New Uses for the Machinery for the Settlement of International Disputes," and "The Pact of Paris." Among the contributors are Professors Seligman, Shotwell, Linglebach, Moon, Chamberlain, and Messrs. George W. Wickersham, Walter Lippmann, David Hunter Miller, Norman H. Davis, and Senator Arthur Capper.

The Political Philosophies Since 1905 (pp. 377) is the outline of a course of lectures given at Benares, India, by Benoy Kumar Sarkar, and published by B. G. Paul and Company, Madras. After brief sketches of political ideas from 1776 to 1870, and from 1870 to 1905, the main body of the book summarizes the contemporary writers of the last twenty-five years. The work is chronological and objective, and with some mention of four hundred writers there is no opportunity for detailed analysis and criticism. Among the Europeans may be noted Lenin, Mussolini, and Spengler; Americans include Dewey, MacIver, Pound, and Woodrow Wilson; the Eastern world is represented by Zaglul Pasha, Kemal Pasha, Sun Yat-Sen, and Chittaranjan Das.

Frank Abbot Magruder has written a text-book for fourth-year high school and beginning college students on *National Governments and International Relations* (Allyn and Bacon, pp. xiv, 595). The book starts with an explanation as to how the United States conducts its foreign affairs, then describes the governments of our various colonial possessions and the problems connected with their administration, and finally proceeds to a consideration of, first, South America, and then other

foreign governments, their problems and relations. Numerous illustrations and problems for discussion are presented at the end of each chapter.

Approximately a dozen informing and suggestive lectures delivered before the Inter-America Institute and the Pacific Southwest Academy of Political and Social Science in February, 1928, have been brought together in a volume entitled *Mexico* (Claremont, Cal., pp. 104). Various aspects of the Mexican problem are discussed by Señor Ramon Bateta, Señor Andrés Osuna, Professor Charles W. Hackett, and other recognized authorities.

Last Words on the Roman Municipalities (pp. 80), by W. J. Heitland, of Cambridge University, is a discussion of the relations of the municipal system to the decline and fall of the Roman Empire. The author considers that this system, while useful in building up the empire, contained inherent defects which were important factors in the later decadence and final break-up of the imperial power.

The year-book for 1927-28 of the North Carolina Club, an organization formed in 1914 for the study and discussion of public affairs, is devoted to *Studies in Taxation* (Univ. of North Carolina Press, pp. 131). Students of state and local government will find here a large amount of useful material on public finance. Attention may be called specially to "The Rural Tax Problem," by Clarence Heer; the "Property Tax Problem," by Ralph C. Hon; "Some Aspects of Municipal Finance in North Carolina," by Ina V. Young; and "Consumption Excise Taxes for State Purposes." The latter paper favors consumption taxes as a part of a diversified tax system.

One of the most recent additions to the Reference Shelf Series, published by the H. W. Wilson Company, is *Financing of State Highways* (pp. 209), compiled by Julia E. Johnsen. This booklet deals largely with the controversy of borrowing versus the pay-as-you-go method of financing state highways, and, like others in the series, presents affirmative and negative briefs (in this case, on the question of approving bond issues for financing highway construction), a bibliography, and extracts from books, articles, and reports dealing with both sides of the question.

Taxation in the Modern State (Longmans, pp. vii, 240), by Alzada Comstock, of Mt. Holyoke College, describes modern tax systems in

the light of changes that have taken place since the war. The topics covered include post-war expenditures in Europe, post-war theories of taxation, American and British income taxes, Continental and Canadian income taxes, sales taxes, inheritance taxation, excises, customs, and capital levies. Students of government who are interested in learning the source of public revenues necessary to support governmental undertakings will find the book of much value.

Political scientists will be interested mainly in that portion of J. A. Hobson's *Economics and Ethics* (Heath, pp. 489) which has to do with organic reforms of the economic system, more particularly two chapters dealing with the state and industry and the ethics of economic internationalism.

Volume II of Social and Economic Studies of Post-War France, edited by Carlton J. H. Hayes, is *The Process of Inflation in France, 1914-1927* (Columbia University Press, pp. 378). The work is of scholarly character and will prove of much value to students of public finance.

RECENT PUBLICATIONS OF POLITICAL INTEREST BOOKS AND PERIODICALS

CLARENCE A. BERDAHL
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AMERICAN GOVERNMENT AND PUBLIC LAW

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INDEX TO VOLUME XXIII

COMPILED BY JESSIE P. BOSWELL

Indiana Legislative Bureau

ADMINISTRATIVE TRIBUNALS. Hart, James, Bearing of Myers v. United States upon the independence of Federal administrative tribunals.....	657
Rosenberry, M. B., Administrative law and the constitution.....	32
<i>Aërial Bombardment and the International Regulation of Warfare</i> , M. W. Royse. Reviewed.....	1044
AFRICA. Book notices.....	514
Book reviews on: Evans, I. L., <i>British in Tropical Africa</i> , Kiewiet, C. W. de, <i>British Colonial Policy and the South African Republics</i> , Maanen-Helmer, E. van, <i>Mandates System in Relation to Africa</i>	1033
AGRICULTURAL COÖPERATION. Book notices.....	239
Decisions: Constitutional decisions of the Supreme Court, police power.....	89
AGRICULTURE. Book notices.....	785
ALLEGHENY COUNTY. Egger, R. A., City-county consolidation in Allegheny county, Pennsylvania.....	121
Allen, John William. Books of, reviewed.....	755
Allen, William H. Book notices.....	1061
Allin, Cephas Daniel. Books noticed.....	510
AMERICA. Book notices.....	230
AMERICAN COUNCIL OF LEARNED SOCIETIES. Notes on.....	173
<i>American Foreign Relations</i> , J. M. Mathews, Reviewed.....	402
AMERICAN POLITICAL SCIENCE ASSOCIATION. Annual meeting.....	179, 738, 989
Report of committee on policy.....	184, 995
<i>American Secretaries of State</i> , S. F. Bemis, ed. Reviewed.....	747
AMERICAN SOCIETY OF INTERNATIONAL LAW. Notes on.....	466
American Trade Union Delegation. Books of, reviewed.....	215
<i>American Year Book</i> . Reviewed.....	781
America's rôle in the League of Nations, M. O. Hudson.....	17
Andrews, John Bertram. Labor legislation in 1928.....	417
Araquistain, Luis. Books of, reviewed.....	210
Archer, Gleason L. Books noticed.....	520
ARKANSAS. Thomas, D. Y., Amending a state constitution by custom....	920
Armstrong, Nellie C. Books noticed.....	786
Astrov, Nicholas J. Books noticed.....	787
AUSTRALIA. Book notices.....	510
AUSTRIA. Book notices.....	508*
Books reviews on: Redlich, Joseph, <i>Austrian War Government</i>	1018

<i>Balkan Pivot; Yugoslavia</i> , C. A. Beard and George Radin. Reviewed	1018
Barker, Ernest. Books noticed	238
Barton, William E. Book reviews	188
Bassett, Edward M. Books noticed	224, 1056
Bates, Frank Greene. Books of, reviewed	205
Bau, Mingchien Joshua. Books noticed	233
Baxter, James P. Book reviews	216, 229, 779
Beard, Charles Austin. Book reviews	190, 1005
Books noticed	220, 514
Books of, reviewed	1018
BELGIUM. Book reviews on: Pierard, Louis, <i>Belgian Problems Since the War</i>	765
Bemis, Samuel Flag, ed. Books of, reviewed	747
Benes, Eduard. Books noticed	227
Benn, Ernest J. P. Books noticed	521
Berdahl, Clarence A. Book reviews	217
Books noticed	221
Departments: Recent publications of political interest	242, 522, 805, 1066
Bernays, Edward L. Books noticed	517
Beveridge, Albert Jeremiah. Books of, reviewed	188
Blachly, Frederick F. Books of, reviewed	481
Black, John D. Books noticed	785
Bober, M. M. Book reviews	1047
Bolton, Herbert E. Books noticed	230
Bond, Carroll T. Books noticed	1056
Book reviews and notices, A. C. Hanford, ed.	188, 469, 747, 1005
Boots, Ralph S. Governors' messages, 1929	410
Borden, Sir Robert. Books of, reviewed	751
BOSTON. Book notices	224
Bowman, Isaiah. Books noticed	230
BRIAND-KELLOGG TREATY. See PACT OF PARIS	
Brierly, James Leslie. Books noticed	229
Brigham, Robert F. Books noticed	1059
Brooks, Robert C. Book reviews	1016
BRYAN, WILLIAM JENNINGS. Book notices	222, 1054
Buchet, Edmond-Eduard. Books noticed	226
BUDGETS, MUNICIPAL. Book notices	220
BUDGETS, STATE. Book notices	1055
Buell, Raymond Leslie. Book reviews	1035
Books noticed	510
Bullard, Arthur. Books noticed	235
Burgess, John Stewart. Books noticed	241
Bush, Chilton R. Books noticed	519
Calhoun, Arthur W. Books of, reviewed	504
CALIFORNIA. Cuncannon, P. M., New charter of Alameda county, California	124

Cameron, Jenks. Books noticed.....	219
CAMPAIGN FUNDS. Pollock, J. K., jr., Campaign funds in 1928.....	59
Report of the Steiwer committee.....	681
Sait, E. M., Campaign expenditures.....	47
CANADA. Book reviews on: Borden, Sir Robert, <i>Canada in the Commonwealth</i>	75
Keenleyside, H. L., <i>Canada and the United States</i>	750
Martin, Chester, <i>Empire and Commonwealth</i>	751
Cardozo, Benjamin N. Books of, reviewed.....	200
CARIBBEAN REGION. Book reviews on: Araquistain, Luis, <i>La Agonia Antillana</i>	210
Welles, Sumner, <i>Naboth's Vineyard; the Dominican Republic</i>	490
Carr, Lewis F. Books noticed.....	785
Carter, Hugh. Books noticed.....	235
Carter, John. Books noticed.....	234
Castle, William R., jr. Book reviews.....	1037
Catlin, George E. G. Book reviews.....	775
<i>Central Americans</i> , Arthur Ruhl. Reviewed.....	1035
Chafee, Zechariah, jr. Book reviews.....	1027
Chapin, F. Stuart. Books noticed.....	236
Chapman, H. Owen. Books of, reviewed.....	1038
Chase, Eugene Parker. Book reviews.....	772
Books noticed.....	1058
Childs, Harwood L. Book reviews.....	769
CHINA. Quigley, H. S., National government of China.....	441
Book notices.....	233, 238, 240, 512, 788, 1062
Book reviews on: Chapman, H. O., <i>Chinese Revolution, 1926-27</i> ...	1038
Hobart, A. T., <i>Within the Walls of Nanking</i>	212
Wu, C. C., <i>Nationalist Program for China</i>	1038
Wu, Kuo-Cheng, <i>Ancient Chinese Political Theories</i>	199
CITIZENSHIP. Book notices.....	223, 235, 785
Book reviews on: Eldridge, Seba, <i>New Citizenship</i>	769
Johnston, G. A., <i>Citizenship and the Industrial World</i>	502
Newman, Sir George, <i>Citizenship and the Survival of Civilization</i>	766
CITIZENSHIP, TRAINING FOR. Book reviews on: Gaus, J. M., <i>Great Britain, a Study of Civic Loyalty</i>	1005
Harper, S. N., <i>Civic Training in Soviet Russia</i>	1005
Weber, E. A., <i>Duk-Duks</i>	1005
CITY AND COUNTY CONSOLIDATION. <i>See</i> LOCAL GOVERNMENT	
CITY MANAGER PLAN. Shenefield, H. T., City manager campaign in Toledo	735
Book notices.....	513
Notes on.....	434, 465
CITY PLANNING. Book notices.....	224, 784
<i>See also</i> REGIONAL PLANNING	
CITY PLANNING, SCHOOL OF. Notes on.....	993

CIVIL SERVICE. Macrae-Gibson, J. H., British civil service and the trade unions act of 1927.....	922
Book reviews on: Stewart, F. M., <i>National Civil Service Reform League</i>	1046
CIVILIZATION. Book notices.....	236, 511
Book reviews on: Newman, Sir George, <i>Citizenship and the Survival of Civilization</i>	766
Claffin, Avery. Books of, reviewed.....	775
Clemenceau, Georges. Books noticed.....	1054
CLEVELAND. Darmstadter, Doris, Cleveland charter threatened again....	732
Colegrove, Kenneth. Expansion of the publications of the Department of State.....	69
Labor parties in Japan.....	329
COLONIAL GOVERNMENT. Book reviews on: Evans, I. L., <i>British in Tropical Africa</i>	1033
Kiewiet, C. W. de, <i>British Colonial Policy and the South African Republics</i>	1033
Maanen-Helmer, E. van, <i>Mandates System in Relation to Africa and the Pacific Islands</i>	1033
COMMERCE, INTERSTATE. Decisions: Constitutional decisions of the Supreme Court, state power affecting interstate commerce.....	97
COMMITTEES. See INVESTIGATING COMMITTEES	
COMMUNICATION, METHODS OF. Book notices.....	789
Communist party of the Soviet Union, S. N. Harper.....	956
Comstock, Alzada. Books noticed.....	1064
CONFERENCE ON RENUNCIATION OF WAR. Notes on.....	994
Conover, Milton. Books noticed.....	221
CONSTITUTIONS. Book notices.....	227, 510
Book reviews on: Jellinek, Walter, ed., <i>Abhandlungen zur Reichsverfassung</i>	202
CONSTITUTIONS, STATE. Field, O. P., State constitutional law in 1928-29; adoption and amendment of constitutions.....	688
Godshall, W. L., State constitutional development through amendment in 1927.....	102
in 1928.....	44
Thomas, D. Y., Amending a state constitution by custom..	920
Book notices.....	506
CONSULAR SERVICE. See DIPLOMATIC AND CONSULAR SERVICE	
CONTRACTS. Decisions: Constitutional decisions of the Supreme Court; contract clause.....	96
Cook, Frederic W. Books noticed.....	785
COÖPERATION. See AGRICULTURAL COÖPERATION	
<i>Coroner and Medical Examiner</i> , Morgan, E. M., and Schultz, O. T. Book notice.....	225
Corwin, Edward Samuel. Democratic dogma and the future of political science.....	569
Book reviews.....	504, 1007

INDEX

1109

Country Life Conferences. Books noticed.....	225
COUNTY GOVERNMENT. Cuncannon, P. M., New charter of Alameda county, California.....	124
Pate, J. E., Recent proposals for reorganizing county government in Virginia.....	131
Book notices.....	1058
Book reviews on: Wager, P. W., <i>County Government and Administration in North Carolina</i>	207
<i>See also</i> LOCAL GOVERNMENT	
COURTS. Book notices.....	1056
<i>See also</i> LEGISLATION, JUDICIAL REVIEW	
COURTS, PROCEDURE. Book reviews on: Gensoul, Louis, <i>L'Organisation de la Justice à l'Usage des Gens du Monde</i>	762
COURTS, UNITED STATES. Cushman, R. E., Constitutional law in 1927-1928, judicial power.....	82
Book reviews on: Willoughby, W. F., <i>Principles of Judicial Administration</i>	1007
Crawford, Finla G. Legislative session of 1929 in New York State.....	914
CRIME SURVEYS. Pfiffner, J. M., Activities and results of crime surveys...	930
Croce, Benedetto. Books noticed.....	1061
CROWDS. Book reviews on: Geiger, Theodor, <i>Die Masse und ihre Aktion</i> ...	771
<i>Cultural Changes</i> , F. S. Chapin. Book notice.....	236
Cuncannon, Paul Miller. New charter of Alameda county, California....	124
Cushman, Robert Eugene. Constitutional law in 1927-1928.....	78
Books noticed.....	1056
CZECHOSLOVAKIA. Book notices.....	227, 508
DANUBIAN STATES. Book notices.....	508
DANZIG. Book reviews on: <i>Entscheidungen des Hohen Kommissars des Völkerbundes in der Freien Stadt Danzig</i> , Harder, H. A., <i>Danzig, Polen und der Völkerbund</i> , Lewinsky, Hermann and Wagner, Richard, <i>Danziger Staats-und Völkerrecht</i>	777
Darmstadter, Doris. Cleveland charter threatened again.....	732
Davis, H. P. Books of, reviewed.....	1035
Deák, Francis. Books noticed.....	232
DeMan, Henry. Books of, reviewed.....	485
DEMOCRACY. Book reviews on: Sait, E. M., <i>Democracy</i>	1032
Stimson, F. J., <i>The Western Way</i>	1030
Denny, Harold Norman. Books of, reviewed.....	1035
Dickinson, Goldsworthy Lowes. Books noticed.....	239
Dickinson, John. Social order and political authority.....	293, 593
Book reviews.....	200, 1029
Dimock, Marshall E. Books of, reviewed.....	471
DIPLOMACY. Book reviews on: Bemis, S. F., ed., <i>American Secretaries of State and their Diplomacy</i>	747
DIPLOMATIC AND CONSULAR SERVICE. Notes on.....	170
<i>Diplomatic Europe Since the Treaty of Versailles</i> , Carlo Sforza. Book notice.....	791

Doctoral dissertations in political science, P. B. Potter.....	795
Dodd, Walter Fairleigh. Books of, reviewed.....	476
Departments: Notes on judicial organization and procedure.....	930
DOMINICAN REPUBLIC. Book reviews on: Welles, Sumner, <i>Naboth's Vineyard, the Dominican Republic</i>	490
Donaldson, John. Books noticed.....	233
DUE PROCESS OF LAW. Cushman, R. E., Constitutional law in 1927-1928, due process of law.....	87, 89
DUGUIT, LÉON. Notes on.....	171
<i>Eagles Black and White</i> . Book notice.....	790
EASTERN QUESTION. <i>See</i> FAR EAST	
Eberling, Ernest J. Books of, reviewed.....	471
<i>Economic Foreign Policy of the United States</i> . B. H. Williams. Book notice.....	789
EDUCATION. Book notices.....	519
Egger, Rowland A. City-county consolidation in Allegheny county, Pennsylvania.....	121
Proposed charter of the federated "City of Pittsburgh"....	718
Eldridge, Seba. Books of, reviewed.....	769
ELECTIONS. Soltau, R. H., British political scene since the general election.....	892
<i>See also</i> CAMPAIGN FUNDS; REGISTRATION; VOTERS	
Ellingwood, Albert R. Book reviews.....	502
Elliott, William Yandell. Book reviews.....	194, 226, 235, 477
Books of, reviewed.....	192
Emerson, Rupert. Book reviews.....	1033
Books of, reviewed.....	757
ENGLAND. <i>See</i> GREAT BRITAIN	
EQUAL PROTECTION OF THE LAW. Decisions: Constitutional decisions of the Supreme court.....	95
Erbe, Carl H. Books noticed.....	1057
Ernst, James E. Books noticed.....	791
Esmein, Adhémar. Books of, reviewed.....	760
EUROPE. Book notices.....	227, 510, 791
Evans, Ifor L. Books of, reviewed.....	1033
<i>Executive Agents in American Foreign Relations</i> . H. M. Wriston. Reviewed.....	1042
Fairlie, John Archibald. Encyclopedia of the social sciences.....	175
Book reviews.....	486
Fairman, Charles. Book reviews.....	780
<i>Falsehood in War Time</i> , Arthur Ponsonby. Book notice.....	518
FAR EAST. Book notices.....	240
Book reviews on: Morse, H. B. and MacNair, H. F., <i>Far Eastern International Relations</i>	496
Roosevelt, Nicholas, <i>Restless Pacific</i>	212
Treat, P. J., <i>Far East, a Political and Diplomatic History</i>	212
FARM RELIEF. Book notices.....	785

FASCISM. Book reviews on: Howard, M. W., <i>Fascism, a Challenge to Democracy</i>	477
Hullinger, E. W., <i>New Fascist State</i>	477
Schneider, H. W., <i>Making the Fascist State</i>	477
See also ITALY	
Fay, Bernard. Books of, reviewed.....	775
Fay, Sidney Bradshaw. Books noticed.....	511
FEDERAL AID. Book notices.....	220
FEDERALISM. Book reviews on: Hintz�, Hedwig, <i>Staatseinheit und Federalismus im alten Frankreich und in der Revolution</i>	763
Fenwick, Charles Ghequier. Book reviews.....	498
Field, Oliver P. State constitutional law in 1928-1929.....	688
Books of, reviewed.....	205
FINANCE, PUBLIC. White, L. D., Public administration, 1928.....	433
Book notices.....	1065
FINANCE, STATE SUPERVISION. Book notices.....	1061
FINLAND. Book notices.....	1062
Forbes, Cameron. Books of, reviewed.....	487
Forbes, Russell. Books of, reviewed.....	1051
Foreign government and politics, W. J. Shepard, ed.....	139, 441, 956
FOREIGN POLICY ASSOCIATION. Notes on.....	169
FOREIGN RELATIONS. See INTERNATIONAL RELATIONS; Names of countries with subhead FOREIGN RELATIONS	
FOREIGN SERVICE SCHOOL. Notes on.....	170
FORESTRY. Peyton, J. S., State forestry legislation 1927-28.....	116
Book notice.....	219
FRANCE. White, L. D., Public administration, 1928.....	438
Book notices.....	226, 237
Book reviews on: Esmein, A., <i>�l�ments de Droit Constitutionnel Fran�ais et Compar�</i>	760
FRANCIS JOSEPH I. Book reviews on: Redlich, Joseph, <i>Emperor Francis Joseph of Austria</i>	1018
<i>Freedom in the Modern World</i> , H. M. Kallen. Book notice.....	517
FREEDOM OF THE PRESS. Book reviews on: Wickwar, W. H., <i>Struggle for the Freedom of the Press</i>	1027
Freund, Ernst. Books noticed.....	1053
Friedrich, Carl Joachim. Book reviews.....	202, 227, 1022
Galloway, George B. Book reviews.....	471
Gaus, John M. Books of, reviewed.....	1005
Geiger, Theodor. Books of, reviewed.....	771
Gensoul, Louis. Books of, reviewed.....	762
GERMANY. Pollock, J. K., jr., German party system.....	859
Book notices.....	511, 519
Book reviews on: Blachly, F. F. and Oatman, M. E., <i>Government and Administration of Germany</i>	481
Emerson, Rupert, <i>State and Sovereignty in Modern Germany</i>	757

Guillebaud, C. W., <i>Works Council</i>	502
Jellinek, Walter, ed., <i>Abhandlungen zur Reichsverfassung</i>	202
Mattern, Johannes, <i>Principles of the Constitutional Jurisprudence of the German National Republic</i>	202
Maxwell, B. W., <i>Contemporary Municipal Government of Germany</i>	484
Gettell, Raymond Garfield. Books of, reviewed.....	196
Gibbon, I. G. Recent changes in the local government of England and Wales.....	633
Godshall, W. Leon. State constitutional development through amendment in 1927.....	102
in 1928.....	404
Gosnell, Harold Foote. Book reviews.....	209
GOVERNMENT. Field, O. P., State constitutional law in 1928-29; structure and functions of government.....	688
relation of government to the individual.....	712
White, L. D., Public administration, 1928.....	427
Book notices.....	221, 507, 520
Book reviews on: Calhoun, A. W., <i>Worker Looks at Government</i>	504
Books and articles on, list of.....	242, 522, 805, 1066
Departments: American government and politics.....	59, 364, 657
<i>See also STATE GOVERNMENT; LOCAL GOVERNMENT</i>	
GOVERNMENT, FOREIGN. Books and articles on, list of.....	251, 531, 814, 1073
GOVERNMENT OWNERSHIP. Book reviews on: Splawn, W. W. M., <i>Government Ownership and Operation of Railroads</i>	1049
GOVERNMENT PUBLICATIONS. Colegrove, Kenneth, Expansion of the publications of the Department of State.....	69
List of.....	278, 558, 848, 1099
Governmental Research Association. Books noticed.....	513
Governors' messages, 1929, R. S. Boots.....	410
Graham, Malbone, W., jr. "Dictatorship" in Yugoslavia.....	449
Spanish directory and the constitution.....	150
Book reviews.....	1018
<i>Grain Growers' Coöperation in Western Canada</i> , H. S. Patton. Book notice.....	239
Granovsky, A. Books noticed.....	519
Grant, J. A. C. <i>Marbury v. Madison</i> today.....	673
Graves, William Brooke. Books of, reviewed.....	473
GREAT BRITAIN. Gibbon, I. G., Recent changes in the local government of England and Wales.....	633
Book reviews on: Gaus, J. M., <i>Great Britain; a Study of Civic Loyalty</i>	1005
Kiewiet, C. W. de, <i>British Colonial Policy and the South African Republics</i>	1033
Minty, L. L., <i>Constitutional Laws of the British Empire</i>	1015
GREAT BRITAIN, FOREIGN RELATIONS. Book notices.....	234
GREAT BRITAIN, GOVERNMENT AND POLITICS. Macrae-Gibson, J. H., British civil service and the trade unions act of 1927.....	922

Soltau, R. H., British political scene since the general election.....	892
Book notices.....	228, 787
Book reviews on: Namier, L. B., <i>Structure of Politics at the Accession of George III</i>	771
Nathan, Manfred, <i>Empire Government</i>	1021
Schuyler, R. L., <i>Parliament and the British Empire</i>	1011
GREECE. Polyzoides, A. Th., Greece abandons proportional representation	459
Greenan, John T. Books noticed.....	223
Greene, Evarts Boutell. Books noticed.....	1057
Groninger, Taylor E. Books noticed.....	515
Gronski, Paul P. Soviet system of Federalism.....	159
Books noticed.....	787
<i>Group Representation before Congress</i> , E. P. Herring. Reviewed.....	469
Gruening, Ernest. Books of, reviewed.....	210
Guérard, Leon. Books noticed.....	237
Guild, June Purcell. Books noticed.....	793
Guilds of Peking, J. S. Burgess. Book notice.....	241
Guillebaud, Charles William. Books of, reviewed.....	502
Gwynn, Denis. Books of, reviewed.....	500
Haines, Bertha Moser. Books of, reviewed.....	222
Haines, Charles Grove. Book reviews.....	1044
Books noticed.....	222
HAITI. Book reviews on: Davis, H. P., <i>Black Democracy</i>	1035
Halévy, Elie. Books noticed.....	792
Hallett, George H., jr. A. "P.R."-city manager charter for Philadelphia...	726
Hamm, William A. Books noticed.....	520
Hanford, Alfred Chester. Book reviews.....	476, 781
Departments: Book reviews and notices.....	188, 469, 747, 1005
Harder, Hans Adolf. Books of, reviewed.....	777
Harper, Samuel N. Communist party of the Soviet Union.....	956
Books of, reviewed.....	1005
Harris, Joseph P. Permanent registration of voters.....	174
Progress of permanent registration of voters.....	908
Hart, Albert Bushnell. Books noticed.....	781
Hart, James. Bearing of Myers v. United States upon the independence of Federal administrative tribunals.....	657
Book reviews.....	473
Harvard Law School. Books of, reviewed.....	1040
Haughan, Jessie W. Books noticed.....	520
HAWAII. Book notices.....	219
Book reviews on: Littler, R. M. C., <i>Governance of Hawaii</i>	1037
Hayden, J. R. Annual meeting of the American Political Science Association.....	179
Book reviews.....	487
Hayes, Carlton J. H. Books noticed.....	1065
Heintzé, Hedwig. Books of, reviewed.....	763

Heitland, W. J. Books noticed	1064
Herring, Edward Pendleton. Books of, reviewed	469
Hervey, John G. Book reviews	505
Books of, reviewed	680
Hicks, Julia M. Books noticed	783
HILL, BENJAMIN H. Book notices	240
Hill, Norman L., Personnel of international administration	972
His, Eduard. Books of, reviewed	1016
Hobart, Alice Tisdale. Books of, reviewed	212
HOBHOUSE, LEONARD T. Book notices	235
Hobson, John A. Books noticed	1065
Holcombe, Arthur Norman. Book reviews	1053
Hormell, Orren Chalmer. State public utilities legislation in 1927	106
Book reviews	484
Books noticed	223
HOUSE, EDWARD MANDELL. Book reviews on: Seymour, Charles, <i>Intimate Papers of Colonel House</i>	190
HOUSING. Book notices	513, 793
Howard, Milford W. Books of, reviewed	477
Howe, M. A. DeWolfe. Books noticed	784
Howland, Charles P. Books of, reviewed	494
Hudson, Manley O. America's rôle in the League of Nations	17
Hughes, Charles Evans. Books noticed	234
Hullinger, Edwin Ware. Books of, reviewed	477
HUNGARY. Book notices	232, 508
Hutchison, David. Books noticed	507
Ichihashi, Yamato. Books noticed	512
IMPERIALISM. Book notices	234
INDIANA. Book notices	786
INDUSTRY. Book reviews on: Guillebaud, C. W., <i>Works Council</i>	502
Johnston, G. A., <i>Citizenship in the Industrial World</i>	502
INITIATIVE AND REFERENDUM. Book reviews on: Schmitt, Carl, <i>Volks- entscheid und Volksbegehren</i>	202
Institute for Government Research. Books noticed	219
INSTITUTE FOR THE STUDY OF LAW. Notes on	467
INSTITUTE OF HUMAN RELATIONS. Notes on	468
INSTITUTE OF INTERNATIONAL LAW. Notes on	744
INSTITUTE OF INTERNATIONAL RELATIONS. Notes on	170
INSTITUTE OF POLITICS. Notes on	467, 744
INSTITUTE OF PUBLIC AFFAIRS. Notes on	744
INSTITUTE OF STATESMANSHIP. Notes on	745
INSURANCE. Book notice	783
INTERNATIONAL INSTITUTE OF INTELLECTUAL COÖPERATION. Notes on	994
INTERNATIONAL INSTITUTE OF PUBLIC LAW. Notes on	177, 993
INTERNATIONAL LABOR ORGANIZATION. Book reviews on: National In- dustrial Conference Board, <i>Work of the International Labor Organization</i>	217

INTERNATIONAL LAW. Book notices.....	226, 229, 230, 231, 235, 790
Book reviews on: Hervey, J. G., <i>Legal Effects of Recognition in International Law</i>	780
Oppenheim, L., <i>International Law</i>	498
Pergler, Charles, <i>Judicial Interpretation of International Law</i>	505
Royse, M. W., <i>Aërial Bombardment and the International Regulation of Warfare</i>	1044
Notes on:.....	177
INTERNATIONAL RELATIONS. Hill, N. L., <i>Personnel of international administration</i>	972
Book notices.....	228, 233, 1063
Book reviews on: Harvard Law School, <i>Nationality, Responsibility of States, Territorial Waters; Drafts of Conventions</i>	1040
Morse, H. B. and MacNair, H. F., <i>Far Eastern International Relations</i>	496
Zimmern, Alfred, <i>America and Europe</i>	1030
Books and articles on, list of.....	259, 538, 825, 1080
Notes on.....	170
INTERVENTION. Book notices.....	235
INVESTIGATING COMMITTEES. Book reviews on: Dimock, M. E., <i>Congressional Investigating Committees</i>	471
Eberling, E. J., <i>Congressional Investigations</i>	471
IOWA. Book notices.....	513
IRELAND. Book reviews on: Gwynn, Denis, <i>Irish Free State, 1922-1927</i> ...	500
Irvin, O. W. Book notices.....	1055
ITALY. Spencer, H. R., <i>Political developments in Italy</i>	139
Book notices.....	1061
JAPAN. Colegrove, Kenneth, <i>Labor parties in Japan</i>	329
Book reviews on: Kitazawa, Naokichi, <i>Government of Japan</i>	773
Jászi, Oscar. Book reviews.....	485, 772
Jaurès, Jean. Books noticed.....	239
Jefferson, Thomas. Books noticed.....	1062
Jellinek, Walter. Books of, reviewed.....	202
Jenks, Edward. Books noticed.....	516
Jennings, Henrietta C. Books noticed.....	519
Johnsen, Julia E. Books noticed.....	782, 1064
JOHNSON, ANDREW. Book notices.....	1054
Johnston, George Alexander. Books of, reviewed.....	502
Jones, Chester Lloyd. Book reviews.....	212, 490
JOURNALISM. Book notices.....	519
Book reviews on: Nevins, Allan, <i>American Press Opinion</i>	774
Wickwar, W. H., <i>Struggle for the Freedom of the Press</i>	1027
<i>Judicial Administration</i> , W. F. Willoughby. Reviewed.....	1007
<i>Judicial Administration in the State of Maryland</i> , G. K. Reiblich. Book notice.....	784
JUGOSLAVIA. Graham, M. W., jr., "Dictatorship" in Yugoslavia.....	449

Book notices	508
Book reviews on: Beard, C. A. and Radin, George, <i>Balkan Pivot; Yugoslavia</i>	1018
JURISPRUDENCE. Book reviews on: Cardozo, B. N., <i>Paradoxes of Legal Science</i>	200
Mattern, Johannes, <i>Principles of the Constitutional Jurisprudence of the German National Republic</i>	202
Books and articles on, list of	271, 550, 837, 1091
Kallen, Horace M. Books noticed	517
Keenleyside, Hugh L. Books of, reviewed	750
Kent, Frank R. Books of, reviewed	474
Kiewiet, C. W. de. Books of, reviewed	1033
Kilpatrick, Wylie. Books noticed	1058
King, Clyde Lyndon. Departments: Legislative notes and reviews	102, 404, 908
Kirsch, Benjamin S. Books noticed	516
Kitazawa, Naokichi. Books of, reviewed	773
Kite, Elizabeth S. Books noticed	784
Knerr, H. J. Book reviews	1044
LABOR. Andrews, J. B., Labor legislation in 1928	417
Colegrove, Kenneth, Labor parties in Japan	329
Book reviews on: National Industrial Conference Board, <i>Work of the International Labor Organization</i>	217
LABOR UNIONS. Book notices	518
Book reviews on: Guillebaud, C. W., <i>Works Council</i>	502
Lambie, Morris B. Book reviews	205
Lasswell, Harold D., Study of the ill as a method of research into political personalities	996
LATIN AMERICA. Book notice	228
• Book reviews on: Rippey, J. F., <i>Rivalry of the United States and Great Britain over Latin America</i>	753
Latourette, Kenneth Scott. Books noticed	512
LAW. Book notices	516, 520, 793
Book reviews: Smith, Maurice, <i>Development of European Law</i>	1029
Books and articles on, list of	242, 522, 805, 1066
LAW, ADMINISTRATIVE. Rosenberry, M. B., Administrative law and the constitution	32
Book notices	1053
See also ADMINISTRATIVE TRIBUNALS	
LAW, CONSTITUTIONAL. Cushman, R. E., Constitutional law in 1927-1928	78
Field, O. P., State constitutional law in 1928-1929	688
Book notices	1056
Book reviews on: Norton, T. J., <i>Losing Liberty Judicially</i>	499
LAW, FRENCH. Book notices	788
LEADERSHIP. Book notices	240

LEAGUE OF NATIONS. Hudson, M. O., America's rôle in the League of Nations.....	17
<i>Legal Topics, Lectures on</i> , New York Bar Association. Book notice.....	792
LEGISLATION, JUDICIAL REVIEW. Grant, J. A. C., <i>Marbury v. Madison</i> • <i>Today</i>	673
Legislative notes and reviews, C. L. King, <i>ed.</i>	102, 404, 908
Legislative session of 1929 in New York State, F. G. Crawford.....	914
LENIN, NIKOLAI. Book notices.....	786
Lewinsky, Hermann. Books of, reviewed.....	777
Liais, Michel. Books noticed.....	235
Liang Chi-Chao. Books noticed.....	238
LIBERALISM. Book reviews on: Ruggiero, G. de, <i>History of European Liberalism</i>	194
LIBERTY. Book notices.....	517
Book reviews on: Norton, T. J., <i>Losing Liberty Judicially</i>	499
LINCOLN, ABRAHAM. Book reviews on: Beveridge, A. J., <i>Abraham Lincoln, 1809-1858</i>	188
LINDSAY, Alexander Dunlop. Book reviews.....	755
Linn, Fritz. Books of, reviewed.....	1052
Littler, Robert M. C. Books of, reviewed.....	1037
<i>Living with the Law</i> , J. P. Guild. Book notice.....	793
LOCAL GOVERNMENT. Egger, R. A., City-county consolidation in Allegheny county, Pennsylvania.....	121
Gibbon, I. G., Recent changes in the local government of England and Wales.....	633
Book notices.....	1058
Books and articles on, list of.....	273, 554, 841, 1094
<i>See also</i> COUNTY GOVERNMENT	
Long, John Cuthbert. Books noticed.....	223
Maanen-Helmer, Elizabeth van. Books of, reviewed.....	1033
McCahan, David. Books noticed.....	783
McCarthy, Sister M. Barbara. Books noticed.....	506
MacDonald, Austin F. Books noticed.....	220
MacIver, Robert Morrison. Book reviews.....	192
MacKaye, Benton. Books of, reviewed.....	1050
Macmahon, Arthur Whittier, Changes of bureau chiefs in the national administration of the United States, 1926-1929.....	383
Second session of the Seventieth Congress.....	364
McMichael, Stanley L. Books noticed.....	1059
MacNair, Harley Farnsworth. Book reviews.....	212, 1038
Books of, reviewed.....	496
McNeill, C. E. Book reviews.....	1049
Macrae-Gibson, J. H. British civil service and the trade unions act of 1927.....	922
Magruder, Frank Abbot. Books noticed.....	1063
<i>Mandates System in Relation to Africa and the Pacific Islands</i> , E. van Maanen-Helmer. Reviewed.....	1033

Marbury v. Madison today, J. A. C. Grant.....	673
Marriott, Sir John A. R. Books noticed.....	228
Martin, Charles E. Books noticed.....	790
Martin, Chester, Books of, reviewed.....	751
Martin, William. Books noticed.....	232
MARYLAND. Book notices.....	784, 1056
MARX, KARL. Book reviews on: Rühle, Otto, <i>Karl Marx, His Life and Work</i>	1047
<i>Masks in a Pageant</i> , W. A. White. Reviewed.....	209
Mason, John B. Book reviews.....	777
MASS PSYCHOLOGY. Book reviews on: Geiger Theodor, <i>Die Masse und ihre Aktion</i>	771
Mather, W. W. Books noticed.....	507
Mathews, John Mabry. Books noticed.....	221
Books of, reviewed.....	492
Mattern, Johannes, Book reviews.....	481, 757, 1052
Books of, reviewed.....	202
Maxwell, Bertram W. Books of, reviewed.....	484
Meinecke, Friedrich. Books noticed.....	227
<i>Mergers and the Law</i> , W. W. Watkins. Book notice.....	793
MEXICO. Book notices.....	1064
Book reviews on: Gruening, Ernest, <i>Mexico and its Heritage</i>	210
Micheles, Vera A. Book reviews.....	215
Miller, David Hunter. Books of, reviewed.....	779
MINNESOTA. Walker, Harvey, Administrative reorganization and the University of Minnesota.....	685
Book notices.....	225
Minor, Henry. Books noticed.....	220
Minty, Leonard LeMarchant. Books of, reviewed.....	1015
MISSIONS. Book notices.....	512
Moon, Parker Thomas. Books noticed.....	1063
Moore, Frederick. Books noticed.....	790
Morgan, E. M. Books noticed.....	225
Morley, Agnes Headlam. Books noticed.....	227
Morley, John, viscount. Books noticed.....	508
Morse, Hosea Ballou. Books of, reviewed.....	496
Morris, Richard B. Books noticed.....	1057
Mosher, William E. Book reviews.....	766
Mott, Rodney L. Book reviews.....	762
Moylan, J. F. Books noticed.....	1059
MUNICIPAL GOVERNMENT. Darmstadter, Doris, Cleveland charter threatened again.....	732
Reed, T. H., Notes on municipal affairs.....	718
Book notices.....	514, 1059
Book reviews on: Wallace, S. C., <i>State Administrative Supervision over Cities in the United States</i>	486
See also CITY MANAGER PLAN	

MUNICIPAL GOVERNMENT, CHARTERS. Egger, R. A., Proposed charter of the federated "City of Pittsburgh".....	718
Hallett, G. H., A "P.R."-city manager charter for Philadelphia.....	726
MUSCLE SHOALS. Book notice.....	782
MUSSOLINI, BENITO. <i>See</i> FASCISM	
Myers, Denys P. Book reviews.....	1040
<i>Naboth's Vineyard</i> , Summer Welles. Reviewed.....	490
Namier, Lewis Bernstein. Books of, reviewed.....	772
Nathan, Manfred. Books of, reviewed.....	1011
National Industrial Conference Board. Books noticed.....	520
Books of, reviewed.....	217
National League of Women Voters. Books noticed.....	507
National Municipal League. Books noticed.....	220
NATIONALITY. Book reviews on: Harvard Law School, <i>Nationality, Responsibility of States, Territorial Waters; Drafts of Conventions</i>	1040
NAVIES. Book notices.....	790
Nelson, Leonard. Books noticed.....	240
Nevins, Allan. Books of, reviewed.....	774
NEW JERSEY. Book notices.....	521
Notes on.....	746
<i>New World</i> , Isaiah Bowman. Book notice.....	230
NEW YORK (STATE). Crawford, F. G., Legislative session of 1929 in New York State.....	914
Newman, Sir George. Books of, reviewed.....	766
New and Notes, F. A. Ogg, ed.....	169, 462, 738, 989
NEWSPAPERS. <i>See</i> FREEDOM OF THE PRESS; Journalism	
Nézard, Henry. Books of, reviewed.....	760
NICARAGUA. Book reviews on: Denny, H. N., <i>Dollars for Bullets</i>	1035
Nolde, Boris E. Books noticed.....	509
NORMAN WAIT HARRIS MEMORIAL FOUNDATION. Notes on.....	744
NORTH CAROLINA. Book reviews on: Wager, P. W., <i>County Government and Administration in North Carolina</i>	207
Norton, Thomas James. Books of, reviewed.....	499
Notes on administration, L. D. White, ed.....	922
Notes on international affairs.....	972
Notes on judicial organization and procedure, W. F. Dodd, ed.....	930
Notes on municipal affairs, T. H. Reed, ed.....	718
Notes on rural local government, T. H. Reed, ed.....	121
Oatman, Miriam E. Books of, reviewed.....	481
Odegard, Peter H. Book reviews.....	469, 474, 775
Offutt, Milton. Books noticed.....	234
Ogg, Frederic Austin. Social science abstracts.....	175
Departments: News and notes.....	169, 462, 738, 989
OPIUM TRADE. Book notices.....	235

<i>Political Behavior</i> , F. R. Kent. Reviewed.....	474
<i>Political Handbook of the World</i> , M. W. Davis and W. H. Mallory.	
Book notice.....	510
POLITICAL PARTIES. Colegrove, Kenneth, Labor parties in Japan.....	329
• Pollock, J. K., jr., German party system.....	859
Book notices.....	220, 226, 786
POLITICAL SCIENCE. Corwin, E. S., Democratic dogma and the future of	
political science.....	569
Dickinson, John, Social order and political authority.....	293, 593
Lasswell, H. D., Study of the ill as a method of research into	
political personalities.....	996
Reeves, J. S., Perspectives in political science, 1903-1928.	1
Young, J. T., Experiment in by-product teaching.....	1002
Book notices.....	238, 791, 1063
Book reviews on: Allen, J. W., <i>History of Political Thought in the</i>	
<i>Sixteenth Century</i>	755
Esmein, A., <i>Éléments de Droit Constitutionnel Français et</i>	
<i>Comparé</i>	760
Gettell, R. G., <i>History of American Political Thought</i>	196
Rice, S. A., <i>Quantitative Methods in Politics</i>	1022
Wu, Kuo-Cheng, <i>Ancient Chinese Political Theories</i>	199
POLITICAL SCIENCE, BIBLIOGRAPHY. Potter, P. B., Doctoral dissertations	
in political science.....	795
Books and articles on, list of.....	242, 522, 805, 1066
Notes on.....	172
POLITICS. Book notices.....	240
Book reviews on: Elliott, W. Y., <i>Pragmatic Revolt in Politics</i>	192
Namier, L. B., <i>Structure of Politics at the Accession of George</i>	
<i>III</i>	772
Pollock, I. L. Book reviews.....	207
Pollock, James K., jr. Campaign funds in 1928.....	59
German party system.....	859
Report of the Steiwer committee.....	681
Polyzoides, Adamantios Th. Greece abandons proportional representa-	
tion.....	459
Ponsonby, Arthur. Books noticed.....	518
POSTGRADUATE INSTITUTE OF INTERNATIONAL STUDIES. Notes on.....	745
Potter, Pitman Benjamin. Doctoral dissertations in political science...	795
Book reviews.....	1042
<i>Power Monopoly</i> , Gifford Pinchot. Book notice.....	521
<i>Pragmatic Revolt in Politics</i> , W. Y. Elliott. Reviewed.....	192
Price, Miles O. Departments: Government publications.....	278, 558, 848, 1099
PROBATION. Decisions: Constitutional decisions of the Supreme Court,	
statutory construction.....	88
PROHIBITION. Decisions: Search and seizure.....	82
PROHIBITORY LAWS. Book reviews on: Norton, T. J., <i>Losing Liberty</i>	
<i>Judicially</i>	499
PROPAGANDA. Book notices.....	517

<i>Prophets True and False</i> , O. G. Villard. Reviewed.....	209
PROPORTIONAL REPRESENTATION. Hallett, G. H., A "P.R."-city manager charter for Philadelphia.....	726
Polyzoides, A. Th., Greece abandons proportional repre- sentation.....	459
<i>Protection of Citizens Abroad</i> , Milton Offutt. Book notice.....	234
Public administration, 1928, L. D. White.....	427
PUBLIC INTEREST. Decisions: Constitutional decisions of the Supreme Court, business affected with a public interest.....	92
PUBLIC OPINION. Book reviews on: Graves, W. B., <i>Readings in Public Opinion</i>	473
Nevins, Allan, <i>American Press Opinion</i>	774
PUBLIC SERVICE, TRAINING FOR. Notes on.....	170
PUBLIC UTILITIES, REGULATION. Hormell, O. C., State public utility legislation in 1927.....	106
Book notices.....	223, 783
<i>Public Utility Rate Making</i> , T. E. Groninger. Book notice.....	515
PURCHASING, GOVERNMENT. Book reviews on: Russell, Governmental Purchasing.....	1051
Quigley, Harold Scott. National government of China.....	441
Book reviews.....	773
Radin, George. Books of, reviewed.....	1018
RADIO. Stewart, Irwin, Recent radio legislation.....	421
Book notices.....	789
RAILROADS. Book reviews on: Splawn, W. W. M., <i>Government Ownership and Operation of Railroads</i>	1049
Rauch, J. G. Books noticed.....	786
Rayner, Robert M. Books noticed.....	518
RECREATION, PUBLIC. Book notices.....	1060
Redlich, Joseph. Books of, reviewed.....	1018
Reed, Thomas Harrison. American Political Science Association, report of committee on policy.....	184
Books reviews.....	765, 1050
Departments: Notes on municipal affairs.....	718
Notes on rural local government.....	121
Reeves, Jesse Siddall. Perspectives in political science, 1903-1928.....	1
Book reviews.....	747
REGIONAL PLANING. Book reviews on: Mackaye, Benton, <i>New Explora- tion, a Philosophy of Regional Planning</i>	1050
REGISTRATION, VOTERS. Harris, J. P., Permanent registration of voters Progress of permanent registration of voters.....	174 908
Reiblich, G. Kenneth. Books noticed.....	784
Reinhold, Peter P. Books noticed.....	511
REMOVAL, POWER OF. Hart, James, Bearing of Myers v. United States upon the independence of Federal administrative tribunals.....	657
<i>Revue Internationale des Sciences Administratives</i> . Book notice.....	519

RHODES, JAMES FORD. Book notices	783
Rice, Stuart A. Books of, reviewed	1022
Rippy, James Fred. Books of, reviewed	753
ROADS. Book notices	1064
Rodick, Burleigh C. Books noticed	230
ROME. Book notices	1064
Roosevelt, Nicholas. Books of, reviewed	212
Rosenberry, Marvin B. Administrative law and the constitution	32
ROUMANIA. Book notices	508
Royal Institute of International Affairs. Books noticed	228
Royse, Morton William. Books of, reviewed	1044
Reggiero, Guido de. Books of, reviewed	194
Ruhl, Arthur. Books of, reviewed	1035
Rühle, Otto. Books of, reviewed	1047
RURAL LIFE. Book notices	225
RURAL LOCAL GOVERNMENT. Notes on	121
RUSSIA. Gronska, P. P., Soviet System of Federalism	159
Harper, S. N., Communist party of the Soviet union	970
Book notices	509, 786, 787
Book reviews on: American Trade Union Delegation, <i>Soviet Russia</i>	215
Harper, S. N., <i>Civic Training in Soviet Russia</i>	1005
Schuman, F. L., <i>American Policy Toward Russia Since 1917</i>	216
Sait, Edward McChesney. Campaign expenditures	47
Book reviews	1030
Books of, reviewed	1032
Sarkar, Benoy Kumar. Books noticed	1063
Schmitt, Carl. Books of, reviewed	202
Schneider, Herbert W. Books of, reviewed	476
Schultz, Oscar T. Books noticed	225
Schuman, Frederick Lewis. Books of, reviewed	216
Schuyler, Robert Livingston. Books of, reviewed	1011
Schuyler, William M. Books noticed	781
<i>Scotland Yard and the Metropolitan Police</i> , J. F. Moylan:	
Book notice	1059
Scott, Walter Dill. Books noticed	239
SEARCH, RIGHT OF. Cushman, R. E., Constitutional law in 1927-1928, search and seizure	82
SECRETARY OF STATE. Book reviews on: Bemis, S. F., ed., <i>American Secretaries of State and their Diplomacy</i>	747
Seidemann, Henry P. Books noticed	219
Seligman, Edwin Robert Anderson. Books noticed	520
SEPARATION OF POWERS. Decisions: Constitutional decisions of the Supreme Court, territories	87
Seymour, Charles. Books of, reviewed	190
Sforza, Carlo. Books noticed	791

Shannon, Fred Albert. Books noticed.....	222
Sharp, Walter Rice. M. Léon Duguit.....	171
Book reviews.....	500
Shenefield, H. T. City manager campaign in Toledo.....	735
Shepard, Walter James. Departments: Foreign governments and politics	139, 441, 956
Shotwell, James Thomson. Books of, reviewed.....	779
Shoup, Earl L. Books noticed.....	507
Siebert, B. de. Books noticed.....	231
Simms, Henry H. Books noticed.....	1057
Simon, E. D. Books noticed.....	793
Sims, Newell L. Books noticed.....	225
SMITH, ADAM. Book notices.....	240
Smith, Darrell H. Books noticed.....	219
Smith, Munroe. Books of, reviewed.....	1029
Social order and political authority, John Dickinson.....	293, 593
Social science abstracts, F. A. Ogg.....	175
SOCIAL SCIENCE RESEARCH COUNCIL. Notes on.....	173, 465, 467, 744
SOCIAL SCIENCES. Fairlie, J. A., Encyclopedia of social sciences.....	175
SOCIAL SCIENCES, BIBLIOGRAPHY. Notes on.....	172
SOCIALISM. Book notices.....	239, 520
Book reviews on: DeMan, Henry, <i>Psychology of Socialism</i>	485
Soltau, Roger H. British political scene since the general election.....	892
SOUTHEASTERN CITIZENSHIP CONFERENCE. Notes on.....	169
SOUTHEASTERN POLITICAL SCIENCE ASSOCIATION. Notes on.....	466
Soviet system of Federalism, P. P. Gronski.....	159
SPAIN. Graham, M. W., Spanish directory and the constitution.....	150
Spencer, Henry R. Political developments in Italy.....	139
Spengler, Oswald. Books noticed.....	236
Splawn, Walter W. M. Books of, reviewed.....	1049
Starr, Joseph R. Book reviews.....	1015
<i>State Administrative Supervision over Cities in the United States</i> , S. C. Wallace. Reviewed.....	486
STATE GOVERNMENT. Book reviews on: Bates, F. G., and Field, O. P., <i>State Government</i>	205
Dodd, W. F., <i>State Government</i>	476
STATE GOVERNMENT, REORGANIZATION. Walker, Harvey, Administrative reorganization and the University of Minnesota.....	685
Book notices.....	506
Notes on.....	746
<i>State Insurance in the United States</i> , David McCahan. Book notice.....	783
<i>Statesmen of the War</i> , William Martin. Book notice.....	232
Steiner Committee, Report of, J. K. Pollock, jr.....	681
Stewart, Frank Mann. Books of, reviewed.....	1046
Stewart, Irwin. Recent radio legislation.....	421
Stieve, Frederic. Books noticed.....	519

INDEX

1125

Stimson, Frederic Jesup. Book reviews.....	499
Books of, reviewed.....	1030
Stratford, Esmé Wingfield. Books noticed.....	511
<i>Stream of History</i> , Geoffrey Parsons. Book notice.....	241
STRESEMANN, GUSTAV. Book notices.....	789
Stryker, Paul. Books noticed.....	1054
Stuart, Graham H. Book reviews.....	494
Books noticed.....	228
Sullivan, Helen I. Book reviews.....	765
SWITZERLAND. Book reviews on: Fueter, Eduard, <i>Die Schweiz seit 1848</i>	1016
His, Eduard, <i>Geschichte des neuern Schweizerischen Staatsrechts</i>	1016
TAMMANY. Book notices.....	1061
TARIFF. Book notices.....	510
Decisions: Constitutional decisions of the Supreme Court.....	78
TAXATION. Cushman, R. E., Constitutional law in 1927-1928, national taxation.....	78
state taxation.....	93, 98
Book notices.....	225, 520, 1060, 1064
Decisions: Constitutional decisions of the Supreme Court, state taxation of Federal agencies.....	99
Taylor, J. R. Stirling. Books noticed.....	787
Telford, Fred. Recent personnel legislation.....	112
Thomas, David Yancy. Amending a state constitution by custom.....	920
Thomas, Elbert D. Book reviews.....	199
Thomas, Harrison Cook. Books noticed.....	520
Thomas, S. M. Books noticed.....	1057
Toledo. Shenefield, H. T., City manager campaign in Toledo.....	735
Tooke, Charles Wesley. Books noticed.....	514
Toynbee, Arnold Joseph. Books noticed.....	234
TRAFFIC REGULATION. Book notices.....	224
<i>Trade Associations</i> , B. S. Kirsh. Book notice.....	516
Treat, Payson Jackson. Book reviews.....	496
Books of, reviewed.....	212
TREATIES. Book notices.....	234
<i>See also</i> PACT OF PARIS	
Tribolet, Leslie Bennett. Books noticed.....	789
Truxal, Andrew G. Books noticed.....	1060
UNITED STATES. Colegrove, Kenneth, Expansion of the publications of the Department of State.....	69
Book reviews on: Fay, Bernard, and Clafin, Avery, <i>American Experiment</i>	775
UNITED STATES, ARMY. Book notices.....	222
UNITED STATES, CIVIL SERVICE COMMISSION. Book notices.....	219
Notes on.....	170
UNITED STATES, COLONIAL PERIOD. Book notices.....	1057

UNITED STATES, CONGRESS. Macmahon, A. W., Second session of the Seventieth congress.....	364
Book reviews on: Herring, E. P., <i>Group Representation before Congress</i>	469
UNITED STATES, CONSTITUTION. Hart, James, Bearing of Myers v. United States upon the independence of Federal administrative tribunals.....	657
Book notices.....	222, 507
Book reviews on: Warren, Charles, <i>Making of the Constitution</i> ...	1044
UNITED STATES, FOREIGN RELATIONS. Book notices.....	228, 234, 789, 790
Book reviews on: Howland, C. P., <i>Survey of American Foreign Relations, 1928</i>	494
Mathews, J. M., <i>American Foreign Relations</i>	492
Rippy, J. F., <i>Rivalry of the United States and Great Britain over Latin America</i>	753
Schuman, F. L., <i>American toward Russia since 1917</i>	216
Wriston, H. M., <i>Executive Agents in American Foreign Relations</i>	1042
Notes on.....	169
UNITED STATES, GOVERNMENT AND POLITICS. Macmahon, A. W., Changes of bureau chiefs in the national administration.....	383
Book notes.....	221, 234, 1057
United States, Naval War College. Books noticed.....	231, 790
UNITED STATES, PRESIDENT. Book reviews on: Linn, Fritz, <i>Staatsrechtliche Stellung des Präsidenten der Vereinigten Staaten von Amerika</i>	1052
UNITED STATES, REVOLUTION. Book notices.....	1058
UNITED STATES, SUPREME COURT. Cushman, R. E., Constitutional law in 1927-1928.....	78
United States Chamber of Commerce. Books noticed.....	1061
UNIVERSITIES, STATE. Book notices.....	1055
UNIVERSITY OF MINNESOTA. See MINNESOTA	
Upton, Lent D. Book reviews.....	1051
Van Cleef, Eugene. Books noticed.....	1062
Villard, Oswald Garrison. Books of, reviewed.....	209
Vinacke, Harold M. Books noticed.....	240
VIRGINIA. Pate, J. E., Recent proposals for reorganizing county government in Virginia.....	131
Book notices.....	1057, 1058
Wager, Paul Woodford. Books of, reviewed.....	207
Wagner, Richard. Books of, reviewed.....	777
WALES. Gibbon, I. G., Recent changes in the local government of England and Wales.....	633
Walker, Harvey. Administrative reorganization and the University of Minnesota.....	685
Wallace, Schuyler Crawford. Books of, reviewed.....	486

WAR. Book reviews on: Royse, M. W., <i>Aërial Bombardment and the International Regulation of Warfare</i>	1044
WAR, CONFERENCE ON RENUNCIATION OF. Notes on.....	994
<i>War and the Russian Government</i> , P. P. Gronskey and N. J. Astrov.	
• Book notice.....	787
Ware, Norman, J. Books noticed.....	518
Warren, Charles. Books of, reviewed.....	1044
WASHINGTON, D. C. Book notices.....	784
WASHINGTON CONFERENCE. Book notices.....	512
WATER POWER. Book notices.....	782
Watkins, M. W. Books noticed.....	793
Weber, Elizabeth Ann. Books of, reviewed.....	1005
Weber, Gustavus A. Books noticed.....	219
Webster, Charles Kingsley. Book reviews.....	755
Welles, Sumner, Books of, reviewed.....	490
Werner, Morris Robert. Books noticed.....	1054
<i>Western Way</i> , F. J. Stimson. Reviewed.....	1030
White, Leonard D. Public administration, 1928.....	427
Departments: Notes on administration.....	922
White, William Allen. Books of, reviewed.....	209
<i>Whither Mankind?</i> C. A. Beard. Book notice.....	514
Wickwar, William H. Books of, reviewed.....	1027
Wilhelm, Richard. Books noticed.....	233
Williams, Benjamin H. Books noticed.....	789
Williams, Edward Thomas. Books noticed.....	240, 1062
Williams, Frank B. Books noticed.....	1056
WILLIAMS, ROGER. Book notices.....	791
Willoughby, William Franklin. Books of, reviewed.....	1007
Wilson, G. G. Books noticed.....	790
WISCONSIN. Book notices.....	1057
Woodruff, Clinton Rogers. Book reviews.....	1046
<i>Worker Looks at Government</i> , A. W. Calhoun. Reviewed.....	504
<i>Works Council</i> , C. W. Guillebaud. Reviewed.....	502
WORLD WAR. Book notices.....	231, 232, 511, 518
Wright, Benjamin F., Jr. Book reviews.....	196
Wriston, Henry Merritt. Books of reviewed.....	1042
Wrong, George M. Book reviews.....	750 1011
Wu, Choa-Chu. Books of, reviewed.....	1038
Wu, Kuo-Cheng. Books of, reviewed.....	199
Wynne, Edward C. Book reviews.....	492
YALE UNIVERSITY. Notes on.....	468
Yeomans, H. A. Book reviews.....	760
Young, James T. Experiment in by-product teaching.....	1002
Zimmern, Alfred Eckhard. Books of, reviewed.....	1030
ZONING. Book notices.....	224, 1056
<i>See also CITY PLANNING</i>	